(28,882)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 368.

SOUTHERN RAILWAY COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Proceedings in the district court of the United States for the western district of North Carolina	1	1
Caption	1	1
Bill of complaint	2	2
Exhibit A—Valuation report	41	22
Exhibit B—Counties of North Carolina served by Southern Railway	42	24
Application for interlocutory injunction	43	25
Order on application	46	27
Notice of hearing on application	48	28
Subpœna	51	29
Amendment to bill of complaint	52	29
Order making N. A. Collins, tax collector, party defendant	53	30
Motion to dismiss bill	54	30
Order overruling motion to dismiss	55	31
Amendment to bill and order making W. L. Murray party	56	32
Order allowing motion for leave to amend	57	33

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 16, 1922.

	Original.	Print.
Answer	59	35
Exhibit A—Statement of taxable values by counties	89	56
Consent decree	95	63
Affidavit of Murray R. Hubbard	98	65
A. H. Plant	115	74
J. B. Duke	128	79
C. E. A. McCarthy	138	84
T. H. Gatlin	140	85
R. E. Johnson	144	88
W. C. Idol	145	89
V. A. J. Idol	146	89
Frank Wineskie	148	90
Guy E. Wells	149	91
J. E. Kirkman	150	91
Harry Raymond	151	92
W. H. Slave	153	92
R. T. Amos	154	93
Wallace B. Davis	155	94
S. M. Hanes	156	94
R. H. Edwards	157	95
Geo. D. Bizzell	158	95
Fred R. Mintz	159	95
Members of tax commission	160	96
Motion to amend bill and order denying same	167	101
Amendment to bill	168	102
Affidavit of B. M. Rogers	172	105
Exhibit A.—Statement of assessments in Alamance County	173	106
Affidavit of C. J. O'Brien	175	110
Murray R. Hubbard	179	113
A. H. Plant	183	117
L. H. Skinner	187	119
Exhibit A—Memorandum of prices, May, 1920 and 1921	189	120
Per curiam opinion	191	121
Decree	196	125
Petition for appeal	198	126
Assignments of error	200	127
Motion of Southern Railway for stay	206	130
Order continuing petition for appeal and stay	207	131
Order allowing appeal and fixing bond	208	131
Bond on appeal	210	132
Citation and service	212	133
Stipulation as to transcript	213	134
Order denying stay and granting 30 days in which to make application to Supreme Court	215	135
Order to transmit record	216	136
Clerk's certificate	216	137

1 UNITED STATES OF AMERICA,
Western District of North Carolina:

At a District Court of the United States of America for the Western District of North Carolina Begun, Opened, and Held on the 18th Day of March, A. D. 1922.

Present: Hon. Edmund Waddill, Jr., Circuit Judge and Hon. H. G. Connor and Hon. Jas. E. Boyd, District Judges, when and where the following proceedings were had, to-wit:

In Equity.

261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as oCmmissioner of Revenue, et als.

1½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Bill of Complaint.

S. R. Prince,
Solicitor for Plaintiff.
L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
Of Counsel.

Endorsed: Filed in this office Sept. 22, 1921. R. L. Blaylock, Clerk.

2 *Bill of Complaint.*

Filed: Sept. 21, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

To the Honorable the Judge of the District Court of the United States in and for the Western District of North Carolina:

The Southern Railway Company, a corporation chartered and existing under and by virtue of the laws of the State of Virginia, and a resident of said State, brings this, its bill of complaint, against A. D. Watts, individually and as Commissioner of Revenue of the State of North Carolina, and a citizen of North Carolina, with his residence at Statesville, in the County of Iredell, State of North Carolina, in this Judicial District of the United States; Baxter Durham, Auditor of the State of North Carolina, Benjamin R. Lacy, Treasurer of the State of North Carolina, and James S. Manning, Attorney General of the State of North Carolina, citizens of the State of North Carolina;

3 C. D. Story, Sheriff of Alamance County, North Carolina;
W. H. Carson, Sheriff of Alexander County, North Carolina;
John A. Lyerley, Sheriff of Buncombe County, North Carolina;
Dan A. Johnson, Sheriff of Burke County, North Carolina;
W. P. Odom, Sheriff of Cherokee County, North Carolina;
J. H. Gunn, Sheriff of Caswell County, North Carolina;
C. L. Spears, Sheriff of Cabarrus County, North Carolina;
John W. Mauser, Sheriff of Catawba County, North Carolina;
H. A. Logan, Sheriff of Cleveland County, North Carolina;
G. F. Winecoff, Sheriff of Davie County, North Carolina;
Fred C. Sink, Sheriff of Davidson County, North Carolina;
George W. Frynt, Sheriff of Forsyth County, North Carolina;
David B. Stafford, Sheriff of Guilford County, North Carolina;
J. W. Carroll, Sheriff of Gaston County, North Carolina;
J. F. Cabe, Sheriff of Haywood County, North Carolina;
V. E. Grant, Sheriff of Henderson County, North Carolina;

4 M. P. Alexander, Sheriff of Iredell County, North Carolina;
E. L. Wilson, Sheriff of Jackson County, North Carolina;

Alex. Moore, Sheriff of Macon County, North Carolina;
W. O. Cochrane, Sheriff of Mecklenburg County, North Carolina;
J. J. Baley, Sheriff of Madison County, North Carolina;
J. L. Nichols, Sheriff of McDowell County, North Carolina;
L. Bun Lloyd, Sheriff of Orange County, North Carolina;
Frank Jackson, Sheriff of Polk County, North Carolina;
J. A. Brady, Sheriff of Randolph County, North Carolina;
J. W. Beason, Sheriff of Rutherford County, North Carolina;
A. P. Sands, Sheriff of Rockingham County, North Carolina;
J. H. Krider, Sheriff of Rowan County, North Carolina;
W. M. De Hurt, Sheriff of Swain County, North Carolina;
W. L. Alberty, Sheriff of Surry County, North Carolina;
Della Grimshawe, Sheriff of Transylvania County, North Carolina;
W. D. Woodruff, Sheriff of Wilkes County, North Carolina;
citizens of the State of North Carolina and inhabitants of the Western United States Judicial District thereof; and
J. W. Cooper, Sheriff of Bertie County, North Carolina;
John F. Harward, Sheriff of Durham County, North Carolina;
Jesse W. Thomas, Sheriff of Edgecombe County, North Carolina;
C. M. Lawrence, Sheriff of Gates County, North Carolina;
E. D. Hunt, Sheriff of Granville County, North Carolina;
J. A. House, Sheriff of Halifax County, North Carolina;
B. Scull, Sheriff of Hertford County, North Carolina;
W. J. Massey, Sheriff of Johnston County, North Carolina;
J. L. Cornwell, Sheriff of Nash County, North Carolina;
J. M. O'Briant, Sheriff of Person County, North Carolina;
J. S. Royster, Sheriff of Vance County, North Carolina;
D. Bryant Harrison, Sheriff of Wake County, North Carolina;
W. D. Grant, Sheriff of Wayne County, North Carolina;
B. E. Howard, Sheriff of Wilson County, North Carolina;
citizens of the State of North Carolina; and
the following citizens of North Carolina, who hold the office of Tax Collector of the city or town of North Carolina set opposite their respective names and each of whom is sued as such Tax Collector:

George Stillman, Andrews;
C. H. Bartlett, Asheville;
J. C. Calhoun, Bryson City;
M. L. Rhyne, Bessemer City;
R. H. Minges, Belmont;
J. D. Eckles, Black Mountain;
G. E. Lathrop, Brevard;
W. P. Williamson, Burlington;
J. C. Rickards, Canton;
W. H. Jarrett, Clyde;
C. M. Creswell, Charlotte;
Oren Kaylor, Conover;
N. H. Huffman, Claremont;
W. L. Sherrell, Catawba;
J. S. Gaither, Cleveland;

W. H. Parker, Carrboro;
R. F. Mills, Concord;
J. B. Readling, Cornelius;
F. A. Brawley, China Grove;
J. E. Lowe, Cary;
B. A. Smith, Clayton;
W. H. Burns, Drexel;
J. R. Patton, Durham;
J. C. Sutton, Dillsboro;
J. A. Johnston, Davidson;
G. E. Lovell, East Kings Mountain;
W. C. Lewis, Elkin;
H. W. May, Elon College;
A. C. Keeter, Forest City;
7 V. G. Grier, Gastonia;
S. B. Brinkley, Glen Alpine;
C. H. Sheppard, Grover;
D. M. Morris, Greensboro;
B. G. Hempley, Glenwood;
C. C. Sheppard, Gibsonville;
Mary Estlow, Graham;
James Rand, Garner;
J. S. Warrick, Goldsboro;
E. M. Rollins, Hot Springs;
R. G. Henry, Hickory;
Julius Harris, Highland;
S. B. Burwell, Henderson;
G. W. Brooks, Hendersonville;
J. B. Hoyle, Hazelwood;
J. G. White, Huntersville;
J. C. Hampton, Hampton;
W. L. Smith, High Point;
T. E. Lloyd, Hillsboro;
W. F. McCulloch, Kernersville;
G. E. Lovell, Kings Mountain;
H. C. Cabiness, Lattimore;
H. S. Adams, Lowell;
M. A. Abee, Long View;
Earl H. Holmes, Lexington;
H. H. Tate, Marion;
T. B. Harris, Mooresboro;
M. Alice Fowler, Mebane;
E. M. Ellis, Morrisville;
G. M. Kipka, Mooresville;
B. I. Smith, Mocksville;
Roy L. Gudger, Marshall;
8 W. J. Hallyburton, Morganton;
J. Luther Hyde, Marble;
Devereaux Birchfield, Murphy;
S. L. Pardue, North Wilkesboro;
R. O. Wilson, Nebo;

David Gaither, Newton;
L. J. Stirewalt, Old Fort;
R. B. Hines, Oxford;
B. L. Strickland, Pine Level;
W. F. Jones, Princeton;
W. M. James, Pineville;
W. I. Tweed, Rosman;
Ed Hugh Lee, Raleigh;
A. P. Hill, Rutherfordton;
E. B. Ware, Reidsville;
B. O. Hamrick, Shelby;
W. C. Robertson, Saluda;
D. W. Julian, Salisbury;
O. T. Mangum, Stem;
J. H. Griffin, Selma;
C. T. Hester, Stovall;
G. W. Long, Statesville;
V. C. Taylor, Sylva;
J. B. Livingston, Tryon;
W. S. Harwell, Troutman;
J. A. Morris, Thomasville;
J. B. Childers, Taylorsville;
E. F. Johnson, Union Mills;
O. C. Grill, Valdese;
W. A. Coble, Waynesville;
Geo. Triplett, West Hickory;
R. R. Kinney, Winston-Salem;
9 J. U. Gibbs, Whittier;
J. E. Coulter, Mayor and Tax Collector, Connelly Springs;
Fred Sechler, Mayor and Tax Collector, Landis;
C. B. Austin, Mayor and Tax Collector, Milton; and the following citizens of North Carolina, who hold the office of Tax Collector of the Special or Graded School District set opposite their respective names and each of whom is sued as such Tax Collector:
W. H. Burns, Drexel Graded School District;
D. A. Johnson, Glen Alpine Graded School District;
D. A. Johnson, Hickory Flat Special School District, No. 4;
D. A. Johnson, Hildebran Graded School District;
E. M. Hairfield, Morganton Graded School District;
D. A. Johnson, Rutherford College Special School District;
D. A. Johnson, Valdese Special School District No. 4;
Ralph Arndt, Claremont Special School District No. 11;
O. W. Kaylor, Conover Special School District No. 10;
D. B. Gaither, Newton Graded School District;
Carl G. Carpenter, Bessemer City Graded School District;
J. A. B. Goodman, Mooresville Graded School District;
A. Chatham, Jr., Elkin Graded School District.

10 1. Plaintiff respectfully represents and shows that it is a corporation of the State of Virginia engaged in the business of a common carrier of freight and passengers, qualified to engage

in said business in the State of North Carolina, and authorized by its Virginia charter and under the laws of North Carolina to lease, use, operate, and acquire other railroads, under which authority it has leased and acquired other railroads in the State of North Carolina. The lines of railroad which it operates run into and through forty-six counties of the State of North Carolina, including Iredell County, with a mileage of 1,093 miles. Plaintiff operates, and during the year 1920 operated as a common carrier of passengers and freight, a system of railroad extending into and through the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Indiana and Illinois, and the District of Columbia, with a total mileage of 6,971 miles. The name, citizenship, and residence of the defendants to this action is as above set forth.

2. The amount involved in this suit, exclusive of interest and costs, is in excess of three thousand dollars ($3,000.00).

3. Plaintiff shows that the tax sections of the Constitution of North Carolina and the plan of taxation now in force in the State of North Carolina. as applicable to this plaintiff and other railroads in the State, are as follows:

(*a*) Section 3 of Article 5 of the Constitution of North Carolina provides in part as follows:

11 "Sec. 3. Taxation shall be by uniform rule and ad valorem; exemptions. Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and, also, all real and personal property according to its true value in money * * *. The General Assembly may also tax trades, professions, franchises, and income," etc.

Section 6 provides:

"Sec. 6. Taxes levied for counties. The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section three, of the constitution: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property."

Section 9 of Article 7 provides:

"Sec. 9. Taxes to be ad valorem. All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same, except property exempted by this constitution."

(*b*) Prior to the first day of May, 1921, the Commissioners, selected from time to time under authority of law to establish the North Carolina State Tax Commission, constituted a Board
12 of Appraisers and Assessors for railroad companies and other companies exercising the right of eminent domain.

(*c*) Under an Act of the Legislature of North Carolina, ratified March 8, 1921, Public Laws of North Carolina, Session 1921, page 288, the powers and duties of the State Tax Commission were transferred to and imposed upon the Commissioner of Revenue.

(*d*) Under Sections 62, 62(*a*), and 63 of the Act of the Legislature of North Caroina, approved March 8, 1921, page 225 of the Public Laws of North Carolina, Session 1921, at page 263 (hereinafter referred to as the Machinery Act), it is provided that railroad companies file certain returns.

(*e*) Under Section 64 of said Machinery Act, it was made the duty of the Commissioner of Revenue at such dates as real estate is required to be assessed for taxation, to first determine the value of the tangible property of each division or branch of such railroad, of rolling stock, and all other physical or tangible property.

Section 64 then provides:

"This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property."

13 Section 64 also provides:

"They (referring to the State Tax Commission, for which was thereafter substituted the Commissioner of Revenue as set forth above) shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property."

Section 64 also provides:

"The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certify, on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city, or town;"

(*f*) Section 65 of the Machinery Act provided for a proportional valuation of interstate railroads in the proportion which the
14 length of the main line of road in the State of North Carolina bears to the whole length of such main line of road, and to determine the value in the State of North Carolina accordingly. Said section contained the following proviso:

"Provided, the commission shall, in valuing the fixed property in this State, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State than the average value for the entire system. On or after the first Monday in July the said commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said commission may, if they see fit, require all argument and communications to be presented in writing."

(*g*) Section 82 (6½) of an act entitled, "An Act to Raise Revenue," approved March 8, 1921, page 147, of the Public Laws of North Carolina, Session 1921, at page 193, provides as follows:

"Railroads. Every railroad company doing business in this State shall annually on or before the thirtieth day of July make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such informaton as the State Tax Commission shall
15 require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one per cent (0.1%) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city, or town shall be allowed to collect any taxes under this section."

(*h*) The State of North Carolina levies also an income tax as provided in the Income Tax Act of 1921, which levies upon
16 the net income for the calendar year 1921 taxes as set forth in said act, page 203, of the Public Laws of North Carolina, Session 1921, amounting to three per cent (3%) on the net income of this corporation.

4. For the year 1919 the ad valorem assessment of the properties of plaintiff in the State of North Carolina was forty-six million, eight hundred sixty-nine thousand, nine hundred and forty-two dollars ($46,869,942.00). In 1920 the State Tax Commission, under the Revaluation Act (Chapter 84, Public Laws of North Carolina, 1919) increased the assessment of said property for 1920 to ninety-six million, six hundred five thousand, six hundred and ninety-four dollars ($96,605,694.00), and plaintiff paid its taxes thereon under written protest. In 1921 the Revenue Commissioner assessed said properties for ad valorem taxes at ninety-six million, three hundred six thousand, three hundred and fifty-seven dollars ($96,306,357.00), being the same as 1920, except for minor changes in local property lying off the right of way. A hearing was had before the Revenue Commissioner and facts adduced showing that said valuation was in excess of the true "actual value" of the property as the said term is defined in Section 28 (*e*) of the Machinery Act, reading in part as follows:

"The words 'actual value,' as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and
17 deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold."

This hearing resulted in the Revenue Commissioner adhering to the assessment of plaintiff's property at ninety-six million, three hundred six thousand, three hundred and fifty-seven dollars ($96,306,357.00). The plaintiff petitioned the Commissioner of Revenue for a review of the assessment of its property by the State Board of Equalization. The Revenue Commissioner, under advice of the Attorney General, held that the plaintiff and other railroads had no appeal to the State Board of Equalization or any other body, but he reheard the matter himself and declined to change said assessment.

5. Plaintiff shows that the assessment of its properties for 1921 as above set forth is in excess of the "true value" in money of said properties for tax purposes as the same is defined in Section 28 (*e*) of the Machinery Act. Neither the State Tax Commission nor the Revenue Commissioner advised plaintiff at what sum the tangible property of plaintiff was assessed, as it provided in Section 64 of the Machinery Act. Neither the State Tax Commission nor the Revenue Commissioner advised plaintff at what sum it or he assessed

the value of the franchise of plaintiff. Plaintiff was advised that the aggregate value of the physical or tangible property and the franchise for 1921 was ninety-six million, three hundred six
18 thousand, three hundred and fifty-seven dollars ($96,306,-357.00) for the purposes of ad valorem taxation. Plaintiff, in 1920, was advised by the Tax Commission that it found an average net income (deducting operating expenses and taxes within North Carolina from operating revenue within North Carolina) of plaintiff's lines, including certain independently operated lines, 1915-1919, to be an average for the five years of six million, one hundred seventeen thousand, six hundred and twenty-five dollars ($6,117,625.00). This sum capitalized at six per cent (6%) produced one hundred one million, nine hundred sixty thousand, four hundred and thirteen dollars ($101,960,413.00), of which amount so found the State Tax Commission for 1920 apportioned ninety-six million, six hundred five thousand, six hundred and ninety-four dollars ($96,605,694.00) to the plaintiff and the remainder to certain independently operated lines. The Revenue Commissioner, in fixing the assessment for 1921, assessed plaintiff at ninety-six million, six hundred five' thousand, six hundred and ninety-four dollars ($96,605,694.00), subject to reductions of outlying real estate, which brought the assessment to the figure at which it now remains of ninety-six million, three hundred six thousand, three hundred and fifty-seven dollars ($96,306,357). It is therefore stated that if the Commissioner used any method, that employed was the same as that for 1920 stated above.

Plaintiff avers that the method used was illegal and resulted in the overassessment of plaintiff's property for the following reasons:

(*a*) In arriving at the assessment for 1920, the State Tax
19 Commission determined, and the Revenue Commissioner pursued, the same plan for 1921, that the plaintiff's annual average net income within North Carolina for the five year period 1915-1919 was $6,117,625.00, which sum was obtained by deducting from revenues allocated to North Carolina the average annual taxes paid in said State and the average annual operating expenses allocated to that State. Plaintiff avers that, as was explained to the Revenue Commissioner, the determination of net income for the State of North Carolina cannot be arrived at justly and fairly by such a method, because allocation of operating expenses to any branch, or division of a railroad, or to any State, is made arbitrarily and not with mathematical accuracy. Plaintiff avers that allocation of operating expenses to branches or sub-divisions of its system is made regularly, but only for comparative purposes, and is recognized to be not only mathematically incorrect but does not truly represent the said expenses; and, further, that such allocation is made in its report to States because of State laws and regulations requiring it. Plaintiff avers that under the existing accounting methods of allocating expenses to North Carolina, operating expenses so allocated are understated and net income overstated in this: That only

expenses accruing within that State are charged to State expenses, while traffic passing through that State is assembled or originates at and is destined to terminal points without North Carolina at which large operating expenses accrue no part of which expense is apportioned to that State, while the mileage revenue therefrom
20 is apportioned to North Carolina. For illustration, a trainload of peaches originates in Georgia, destined to New York, ther *is* first the assembling charges, then there *is* the terminal expenses of the Atlanta, Ga., yards, and finally the terminal expenses at Potomac Yards, Va., no part of which is charged in North Carolina expenses, while North Carolina revenue is credited with a full mileage proportion of the entire revenue.

This method which was employed by the Revenue Commissioner works to the disadvantage of plaintiff for the purpose of ascertaining the net income in North Carolina in this: (*a*) the traffic which moves through the State of North Carolina greatly exceeds the traffic originating in or destined to North Carolina, and, therefore, North Carolina escapes any terminal expenses on a large volume of the total traffic; and (*b*) the terminal expenses on traffic originating or destined to North Carolina are very much less than those without the State at points like Atlanta, Birmingham, Pinners Point, Brunswick, Memphis, St. Louis, Potomac Yards, etc. That under such plan so employed the result is a showing that the ratio of operating expenses to operating revenues in North Carolina is less than that of the entire system, which plaintiff avers is not true. Plaintiff states that operating revenues and operating expenses for the entire system are kept with mathematical accuracy; that its accounting thereof is done under rules prescribed by the Interstate Commerce Commission, and is checked by that body and also by certified public account-
21 ants. And plaintiff further avers that if the value of its property is to be determined by a capitalization of its net income, the capitalization of its net income for the entire system should be used in order to determine the value of its entire property, which should then be apportioned to North Carolina, or any other State, upon any fair and reasonable method. Plaintiff avers that a statement of its system operating results for the last five year period, which has been filed with the North Carolina Commissioner of Revenue, is as follows:

Year to Dec. 31.	Gross op. revenues.	Op. expenses and taxes.	Net operating income.
1920	$151,864,389.45	$136,538,588.22	$15,325,801.23
1919	129,787,811.61	118,932,543.03	10,855,268.58
1918	126,574,296.85	96,214,582.21	30,359,714.64
1917	90,716,568.96	64,286,607.25	26,429,961.71
1916	75,554,651.59	52,155,258.29	23,399,393.30
Total five years	$574,497,718.46	$468,127,579.00	$106,370,139.46
Average	$114,899,543.69	$93,625,514.80	$21,274,027.89

Plaintiff avers that the proper figure to capitalize, if that method is to be used, was twenty-one million, two hundred seventy-four thou-

sand, and twenty-seven dollars and eighty-nine cents ($21,274,027.89), and capitalizing that figure, the showing, as compared with the 1921 assessment, is as follows:

Rate.	Capitalized system values.	To North Carolina. On road mileage basis.	To North Carolina. On gross earnings basis.	1921 assessment of com. of rev.
6%	$354,567,132.00	$71,267,994.00	$78,004,769.00	$96,306,357.00
7%	303,914,684.00	61,086,851.00	66,861,230.00	
8%	265,925,349.00	53,460,995.00	58,503,577.00	

22 The result is further that the assessment of the Revenue Commissioner, arrived at as above pointed out, amounts to a tax upon property beyond the jurisdiction of the State and is a burden on commerce among the States and violates the Commerce Clause of the Constitution of the United States.

(*b*) The percentage used by the Revenue Commissioner in capitalizing was six per cent (6%). That figure is not at this time a proper figure because the lowest rate generally sought and obtained upon capital invested in business generally in the State of North Carolina is at this time not less than eight per cent (8%). At the time said assessment was made this company and railroad companies generally, which enjoyed the highest credit, were paying not less than seven and one-half per cent (7½%) for money and, as a rule, money yielded as much as eight per cent (8%). No railroad securities bearing six per cent (6%) were worth par on the market. Therefore, the rate at which the average net income should have been capitalized was not less than eight per cent (8%), and this rate does not allow, as the rate should, anything for the hazards of such an investment. Plaintiff's lines run into and through many other States, and, as evidence of the correctness of capitalization at not less than eight per cent (8%), it is averred that the taxing boards of the following States, have, for 1921, in arriving at the assessment on the capitalization basis, used the following rates of interest:

23 Georgia	8 %
Alabama	8 %
Mississippi	8 %
Louisiana	10 %
Tennessee	7 %
Kentucky	8½%
Ohio	8 %
Indiana	

As averred, the net income figure of six million, one hundred seventeen thousand, six hundred and twenty-five dollars ($6,117,625.00) for North Carolina used by the Revenue Commissioner was far in excess of the proper figure, but using that figure, if plaintiff's assessment had been arrived at by capitalizing at eight per cent (8%), the assessed value in North Carolina would have been, under the method employed by the Revenue Commissioner, seventy-six mil-

lion, four hundred seventy thousand, three hundred and twelve dollars ($76,470,312), as against the Revenue Commissioner's assessment of $96,306,357.00.

(c) Plaintiff shows that in arriving at the value the North Carolina law required to be considered the value placed upon the whole property by the public as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property. If the Revenue Commisisoner had used that basis, it is averred that, using the fair average market price available during the past year for the outstanding securities of Southern Railway Company for the owned and leased lines, the value is shown to be two hundred ninety-seven million, nine hundred nineteen thousand, one hundred dollars ($297,919,100.00). If we take the road mileage proportion
24 of this figure, as is directed by Section 64 to be used in apportioning the value between counties, and as is approved by Section 65 of the Machinery Act, it would allocate to the State of North Carolina a value of fifty-nine million, eight hundred eighty-one thousand, seven hundred and thirty-nine dollars ($59,881,739 00). If we allocate to North Carolina a proportion of the stock and bond value on the gross earnings basis, it would amount to sixty-five million, five hundred forty-two thousand, two hundred and two dollars ($65,542,202.00), as compared with the 1921 assessment of $96,306,357.00.

Plaintiff avers that under no one of these accepted tests, viz., capitalization of earnings, and the market value of the stocks and bonds, is the true value of its property as much as the assessment herein complained of.

6. Plaintiff shows that the Bureau of Valuation of Interstate Commerce Commission has found as a tentative value of the cost of reproduction new of its said properties in North Carolina, the sum of fifty-three million, three hundred twenty-six thousand, nine hundred and fifty-one dollars ($53,326,951.00), and has found as the reproduction cost, less depreciation, the sum of forty-four million, eight hundred twenty-seven thousand, six hundred and thirteen dollars ($44,827,613 00). The above figures, while tentative, are those found by the Bureau of Valuation of the Interstate Commerce Commission, as shown by Exhibit "A," hereto attached, and do not include the value of land or the value of rolling stock.
25 The total figures above set forth include, as will be seen from Exhibit "A," values for Atlantic & Yadkin Railway Company, High Point, Randleman, Asheboro & Southern Railroad Company, and Yadkin Railroad Company, separately operated companies, and since the $96,306,357.00 assessment complained of does not include the assessment of the three roads named, there should be deducted from the—

the following:		Reproduction cost new of—		Reproduction cost less depreciation of—
		$53,326,951.00		$44,827,613.00
A. & Y.....	$3,282,353.00		$2,693,272.00	
H. P. R. A. & S.	342,427.00		262,626.00	
Yadkin	643,072.00	4,267,852.00	508.877.00	3,464,775.00
Leaving for Southern Railway Company and Lines it Operates.		$49,059,099.00		$41,362,838.00

The Interstate Commerce Commission has also furnished to plaintiff a statement of the inventory cost of its rolling stock as of June 30, 1916, which, less depreciation as shown by the Commission, amounts to $51,076,984.00. Plaintiff has purchased since that time rolling stock of the cost of $16,294,158.00. Adding these two, we have as the total for rolling stock, $67,371,142.00. Dividing that on a mileage basis would give as the North Carolina proportion $13,541,600.00. This gives a total tentative figure made up as above stated of:

26	Reproduction cost, less depreciation.....	$41,362,838.00
	North Carolina proportion of rolling stock..	13,541,600.00
Estimated value of land.....		5,000,000.00
Total.....		$59,904,438.00

The above total of $59,904,438.00 is averred to be the limit of true value in North Carolina for ad valorem taxing purposes beyond which plaintiff's property should not in any event be assessed. As against this, the Commissioner of Revenue, plaintiff is advised, believes and hence states, assessed as the total value of plaintiff's tangible property the sum of $78,778,169.00 and to this he added as the intangible or franchise value the sum of $17,528,188.00, making a total assessment for ad valorem purposes of $96,306,357.00. The assessment of plaintiff's property now complained of is $36,401,919.00 in excess thereof, and the illegal tax which will be collected thereon if said assessment is allowed to stand will be approximately three hundred thousand dollars ($300,000.00).

Plaintiff does not concede that the valuation found by the Interstate Commerce Commission under the Interstate Commerce Act is the true value for tax purposes required by the Constitution and laws of North Carolina, but it is advised and states that wherever railroads have been able to show to the Commissioner of Revenue the tentative value as fixed by the Interstate Commerce Commission, the Commissioner of Revenue has recognized the same and the recognition thereof resulted in the reduction of the assessed value of said railroads many millions of dollars.

27 Plaintiff avers that its tax authorities did not have and did not present to the Commissioner of Revenue at the hearing the tentative values above set forth. It avers that said

facts as to value prove that the showing made to the Commissioner of Revenue of overassessment of its property was correct, and in order that discrimination may not result as between the several railroads in the State of North Carolina, no assessment should be made against plaintiff which does not recognize the said tentative value, and as a fact at this time the Uniformity Section of the Constitution of North Carolina, and the Fourteenth Amendment to the Constitution of the United States are violated by reason of the fact that the 1921 assessment of plaintiff is not controlled, modified, or measured by said tentative assessment as was the assessment of other railroads in North Carolina.

Plaintiff avers that the over assessment of its property in North Carolina is further shown in this: The per annum standard return allowed the Southern Railway Company under the Act of Congress known as the Federal Control Act, as just compensation to the Southern Railway Company for the possession, use, control, and operation of all of its properties by the Federal Government was $18,653,893.15. The State of North Carolina's mileage proportion of said standard return was $2,924,791.49. That figure, capitalized at six per cent, gives a value of $48,746,707.00, or $45,559,650.00 less than the assessment of the Revenue Commissioner herein complained of; if the above return proportioned to North Carolina be capitalized at eight per cent, the result is $36,559,757.00, as
28 compared with the complained of assessment of $96,306,-357.00.

7. Plaintiff shows that the assessment made against it in 1920 was accepted under protest and the tax paid under protest, and that it has never recognized or admitted the correctness of any such assessment.

8. Plaintiff shows that Section 28(*a*) of the Machinery Act reads as follows:

"The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen (any vacancy which may have occurred to be filled by appointment of the board of county commissioners), shall meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of real property as heretofore appraised and assessed in the county as a whole is in excess of the fair value of such property at the time of meeting of such board. The chairman of the board of county commissioners shall be the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be secretary of the said board. The said board shall make proper inquiry and investigation into the existing values of real property as compared with the assessed and appraised values thereof in the several cities, towns, and townships of

the county; and if it shall find that the assessed value of such
29 property is in excess of the actual value, it shall find the average percentage of such excess in the county as a whole, or in the several cities, towns, and townships, and shall report its finding so made to the State Tax Commission not later than the twentieth day of April, one thousand nine hundred and twenty-one. The values so reported shall be the values at which the property shall be assessed for taxation, unless and until the same have been changed and revised by the State Tax Commission and certified to the board of county commissioners of such county, which shall be done not later than the first day of July, one thousand nine hundred and twenty-one."

Acting under said Section 28(*a*), the respective County Boards of Review of the counties through which plaintiff operates shown on attached Exhibit "B," made a part hereof, made horizontal reductions in the percentage set opposite each in the assessed value in the said counties as a whole of real property assessed by said County Boards and upon report of their action to the State Board of Equalization, the assessments so horizontally reduced were not revised or changed by the State Board of Equalization and remain the value at which the property other than railroads is now assessed.

The assessment of 1920 was by legal presumption at true value, in fact it was in excess of true value. The assessment of other property was by like legal presumption at true value. The County Boards made a horizontal systematic reduction, the Commissioner of Revenue made no similar reduction on plaintiff's prop-
30 erty,—result discrimination and violation of the Constitution of North Carolina and of the Constitution of the United States.

Plaintiff avers that the Commissioner of Revenue, in fixing the assessment herein complained of, declined to consider or to give to plaintiff the benefit of any similar horizontal reduction in the right of way lands and structures thereon of plaintiff situated in said respective counties, or to make any reduction in its assessment, and that this declination on the part of the Commissioner of Revenue is a discrimination violative of Section 3 of Article 5 of the Constitution of North Carolina and violative of the Fourteenth Amendment to the Constitution of the United States, now especially pleaded and relied upon.

The result is that while other taxpayers generally will, due to decrease in assessment and increase in rate, pay no more, if as much, tax as last year, the plaintiff will, due to increase in rate, pay on the same assessment, it is estimated, an increased tax of approximately one hundred and eighty thousand dollars ($180,000).

9. Plaintiff is advised and, on information and belief, states that the tax rate either has been or will be materially increased in said counties in order that the amount of needed revenue may be raised. The result is that the assessment of plaintiff's property remains practically the same, whereas the assessment of other property is reduced. The causes which brought about a reduction in value of

real estate in the counties in which the reduction was made
31 apply with even greater force to plaintiff's property. The reduction in value has not been confined to real property of individuals, but applies alike to real estate of plaintiff and other railroads and to the property generally of plaintiff. Plaintiff avers that the reduction being horizontal, shows that it was not based upon any reduced value of any particular piece of real estate or upon facts individual to any individual taxpayer, but is due to general conditions applicable alike to all and should, therefore, be applied alike to all and plaintiff should derive the benefit thereof, and its failure to receive the benefit thereof is contrary to Section 3, Article 5, of the North Carolina Constitution and to the Fourteenth Amendment to the Constitution of the United States.

10. Plaintiff recognizes that values of other property in North Carolina are depressed and that there was doubtless just ground for a reduction in taxable values, but it shows that its values are largely dependent upon the values of other property in the State and its business fluctuates with the prosperity of the States it serves, including North Carolina, and it is common knowledge and a fact that plaintiff's property, like other railroad property, and the value of the use thereof, has been very greatly depressed in 1921 and, therefore, a commensurate reduction in its taxable values should have been made, and the failure to do so is discrimination and contrary to the uniformity clause of the Constitution of North Carolina and the Fourteenth Amendment of the Constitution *to* the United States.

32 Plaintiff states as proof of the depression in its business, and, resulting therefrom, depressed value of its property, that for the first six months of 1921 it lacked, after paying operating expenses, taxes, hire of equipment and rents for joint facilities, more than $4,500,000.00 of earning sufficient money to pay the interest on its bonded indebtedness.

11. Plaintiff avers that under the scheme of laws provided by the State of North Carolina, all taxpayers other than railroads and others assessed by the Revenue Commissioner have the right to appeal to and the duty of equalization is placed upon the State Board of Equalization consisting of three individuals. That prior to 1921 the railroad assessments were fixed by a board of three, known as the State Tax Commission, but under the law of 1921 the assessment is fixed by the Rvenue Commissioner and the law does not provide, as was the legislative intention under the heretofore recognized policy of the State, for any appeal from this assessment fixed by the one individual. This is a denial of the equal protection of the law and of the uniformity clause of the North Carolina Constitution.

12. Plaintiff further shows that the so-called Franchise Tax is not a franchise tax measured by the value of the use of the property, but is in truth and in fact an ad valorem tax based on the value of the property. This being true, and it being further true that said

so-called Franchise Tax is levied only upon corporations, the
33 result is that this ad valorem tax is not levied equally upon all property holders in the State and is, therefore, contrary to Section 3 of Article 5 of the Constitution of North Carolina, and by reason of the enforcement thereof plaintiff is deprived of the equal protection of the law contrary to the Fourteenth Amendment to the Consitution of the United States. This Franchise Tax is one-tenth of one per cent (0.1%) on the assessed value of the property for ad valorem purposes, and, therefore, the fixing by the Revenue Commissioner of a sum greatly in excess of the true value for ad valorem purposes is doubly iniquitous and damaging because that excessive assessment is also used as the basis for the illegal so-called Franchise Tax.

Plaintiff's property is assessed for ad valorem purposes at the sum of ninety-six million, three hundred six thousand, three hundred and fifty-seven dollars ($96,306,357.00), and on that sum it pays to each county the assessed rate of that county, just as other property holders do. In addition to that, it pays to the State, under the guise of a franchise tax, one-tenth of one per cent (0.1%) on that same ad valorem value.

Plaintiff further avers that this so-called Franchise Tax violates the uniformity section of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States in that as to all other corporations it is measured by the capital stock, whereas as to railroads it is based upon the ad valorem value for taxation.

Plaintiff avers that if the so-called Franchise Tax is con-
34 strued to be a tax for the privilege of doing business, it is unconstitutional and void as a tax upon the privilege of engaging in interstate commerce and violates the commerce clause of the Constitution of the United States.

13. Plaintiff further shows that the assessment of its property in excess of its true value results in erroneous importation of value into the State of North Carolina, and by as much as such erroneous value is imported into North Carolina and taxed, the tax amounts to a direct burden upon interstate commerce and contravenes the Constitution of the United States.

14. Plaintiff further shows that the system of pyramiding taxes, as is evidenced by the tax laws of the State of North Carolina set forth above, including the income tax of three per cent (3%) on the net income, is such a burden on this interstate carrier as to amount to a direct burden on interstate commerce contrary to the Constitution of the United States.

15. Plaintiff avers that said assessment was improperly made and is not according to law and is excessive, oppressive and illegal and there was not before the Commissioner of Revenue any competent evidence to sustain it.

16. Plaintiff shows that it will owe to the State, counties and municipalities the legally enacted tax upon whatever may be found

to be the legal assessment of its property for taxes in the State
35 of North Carolina, and inasmuch as it has no desire to embarrass the State, counties and municipalities in the collection of the revenue to which they may be entitled, it expresses a willingness, if any plan may be devised under which it may legally do so, to pay, at the time the same may come due according to law, the taxes based upon a certainly legal assessment of its property.

17. Plaintiff avers that notice of the herein complained of assessment, dated August 27th, was received by plaintiff August 29th, and while the preparation of this bill was in progress it was advised that said assessment had been on September 2, 1921, certified to the State Auditor and to the several counties and municipalities in the State of North Carolina in which plaintiff's lines are subject to tax. Plaintiff has, therefore, joined as parties defendant hereto the State Auditor and the State Treasurer, who, under the law, respectively charge for collection and receive payment of the franchise tax and the Sheriff of each county in which plaintiff has property, upon whom the law places the duty of collecting the county taxes levied upon said illegal assessment, and the City or Town Tax Collector of each incorporated city or town in which plaintiff has property, upon each of whom the law imposes the duty of collecting the city or town taxes on said illegal assessment, and unless said officers are joined in this suit, plaintiff will be required to institute a number of suits, all of which will involve the same and the one question of the validity of said assessment made by the Commis-
36 sioner of Revenue. The assessment is made as an entirety by the Revenue Commissioner and by him apportioned to the several counties and municipalities of the State. The Boards of County Commissioners and the Chairmen of the County Commissioners and the Mayor of each incorporated city and town do not make the assessment and are not empowered to change the same. They are required by law to assess against this railroad on the proportion of said invalid assessment so certified to it or him the tax imposed for county, township, city or other tax district purposes and levied on other property.

Unless the tax collecting officers of the several counties and municipalities are restrained, they will proceed under the law to collect the tax on the illegal assessment, which tax becomes due on the first Monday in October. Under the law of North Carolina, the taxes so assessed in behalf of the State, counties, town and cities, if not paid, will under the Statutes of North Carolina become a first lien upon the property of the plaintiff in North Carolina and will be a cloud upon the title to said property, and if said taxes are not paid as assessed, the penalties as provided by law will attach and its property will be sold for the taxes, all to the great damage of plaintiff for which it has no adequate remedy at law.

Prayer.

Wherefore, and for as much as plaintiff is remediless in the premises, according to the common law, and remediable only in

equity, and that plaintiff may not be subjected to a multi-
37 plicity of suits which would otherwise develop, and may not suffer irreparable injury and damage, and may be permitted to pursue and carry on its business without unlawful hindrance and destruction, and that the railroads by plaintiff operated in the State of North Carolina as aforesaid and its other property herein may not be subjected to illegal liens and clouds, plaintiff prays for a writ of subpœna to issue against the defendants and each and every one of them named and described as aforesaid, to appear and full and true answer make to this bill of complaint, and that said defendant A. D. Watts state in his answer the method whereby he reached the so-called final assessment, but not under oath, answer under oath being hereby waived, and that said defendants, and each of every one of them, be enjoined by final decree and, meanwhile, by a preliminary injunction as follows, to wit:

That said A. D. Watts, as the Commissioner of Revenue of North Carolina, be enjoined and restrained from certifying to the State Auditor the said illegal ad valorem assessment as the value upon which shall be calculated the amount of taxes which plaintiff shall pay as a franchise or privilege tax.

That Baxter Durham, as Auditor of North Carolina, be enjoined and restrained from charging to plaintiff for collection and that Benjamin R. Lacy, as State Treasurer, be enjoined and restrained from collecting from the plaintiff the franchise or privilege
38 tax on the assessment herein complained of until the final order of this Court.

That James S. Manning, as Attorney General of North Carolina, be enjoined and restrained from instituting or authorizing the institution of any suit or proceedings to collect any tax based upon said illegal assessment until the final order of this Court.

That each of the defendant sheriffs aforesaid of the respective counties be enjoined and restrained from collecting or taking any steps to collect from plaintiff upon the proportion of said assessment apportioned to and certified by the Revenue Commissioner as being apportioned to his county, any and all taxes levied thereon for county, township, or other taxing district purpose until the final order of this court.

That each of the defendant city or incorporated town Tax Collectors of the respective cities and towns aforesaid be enjoined and restrained from collecting or taking any steps to collect from plaintiff upon the proportion of said assessment apportioned to and certified by the Revenue Commissioner to the respective Mayors of said cities and towns as being apportioned to his respective city or town, any and all taxes levied thereon for city, town, or other municipal purpose until the final order of this court.

That each of the defendant Tax Collectors of School Districts be enjoined and restrained from collecting or taking any steps to collect from plaintiff any taxes levied on said void assessment, until the final order of this Court.

39 That on final hearing the Revenue Commissioner be enjoined and commanded to cancel the illegal assessment afore-

said and to withdraw from the several Chairmen of the County Commissioners and the Mayors of each city or incorporated town to which certificate of a proportion thereof has been made and from all others to whom certificate thereof has been made, the certificate thereof so made.

Plaintiff further prays that the tax statutes of North Carolina herein alleged to be unlawful be decreed by this Court to be unconstitutional and invalid, and that no assessment for taxation be made against plaintiff thereunder, and no tax be levied against or collected from plaintiff thereunder; and for all such other, further, general, and special relief as in equity it may be entitled to.

This is the first application for injunction in this cause.

S. R. PRINCE,
Solicitor for Plaintiff.

L. E. JEFFRIES,
MANLY, HENDREN & WOMBLE,
A. B. ANDREWS,
Of Counsel.

DISTRICT OF COLUMBIA,
City of Washington:

F. S. Wynn, being duly sworn, deposes and says that he is Vice-President of the Southern Railway Company, the above-named plaintiff, which is a corporation; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

F. S. WYNN.

Subscribed and sworn to before me this 20th day of September, 1921.

HARRY K. PIMPER, [SEAL.]
Notary Public, District of Columbia.

Filed in this office Sept. 22, 1921.
R. L. BLAYLOCK,
Clerk.

State of North Carolina, Southern Railway Company	Main track miles.	2d track miles.	All track miles.	Reproduction cost new.	Reproduction cost less depreciation.	Ratio reproduction cost less depreciation to reproduction cost new.
Wholly owned and used	595.904	50.667	863.351	$28,648,514	$24,282,028	85
Wholly owned but jointly used with the Western Telegraph Company	.....	.....	.....	$42,964	$24,641	57
Wholly used but not owned, leased from—						
The Atlantic and Danville Railway Company	22.178	.....	23.557	$341,888	$276,997	81
North Carolina Railroad Company	223.548	91.342	443.105	11,148,528	9,318,201	84
The Atlanta & Charlotte Air Line Railroad Company	42.763	1.336	65.695	2,228,220	1,908,742	86
The North & South Carolina Railroad Company	3.704	.....	4.763	54,437	45,633	84
State University Railroad Company	10.154	.....	11.501	159,457	126,525	79
Atlantic & Yadkin Railway Company	160.087	.....	184.086	3,282,353	2,693,272	82
Hight Point, Randleman, Ashboro & Southern Railroad Company	26.928	.....	33.783	342,427	262,626	77
Yadkin Railroad Company	40.559	.....	51.042	643,073	508,877	79
Tallassee Power Company	5.791	.....	6.287	141.151	122,202	87
The North Carolina Midland Railroad Company	55.570	.....	62.645	1,480,742	1,213,546	82
Southern Railway—Carolina Division	106.667	.....	124.532	3,731,063	3,134,271	84
Transylvania Railroad Company	41.936	.....	49.491	824,409	675,640	82
Total	739.885	92.678	1,060.487	$24,377,748	$20,286,532	83

Jointly used but not owned, leased from—						
Tallassee Power Company (jointly used with Winston-Salem Southbound Railway Company).	5.322	.....	6.812	$236,591	$220,886	93
Southern Railway—Carolina Division (jointly used with the Western Union Telegraph Company)	.....	.....	.....	11,581	6,694	58
Transylvania Railroad Company (jointly used with the Western Union Telegraph Company)...	.....	.....	.....	9,553	6,832	71
Total	5.322	.....	6.812	$257,725	$234,412	91
Grand total owned	595.904	50.667	863.351	$28,691,478	$24,306,669	85
	5.322	.....	6.812			
Grand total used	1,335.789	143.345	1,923.888	$53,326,951	$44,827,613	84

DISTRICT OF COLUMBIA,
City of Washington:

Before me, Harry K. Pimper, a Notary Public, in and for said District, personally appeared D. W. Lum, who, being first duly sworn, on oath states:

I am the Special Engineer of Southern Railway Company, in charge of its Valuation Department, and as such have received from the Bureau of Valuation of the Interstate Commerce Commission what is known as the Engineering Report of said Bureau. The foregoing page is a true and exact copy of page 69 containing the summary of said report, the original of which is on file in my office.

D. W. LUM.

Subscribed and sworn to before me this 20th day of September, 1921.

HARRY K. PIMPER,
Notary Public, District of Columbia.

42 PLAINTIFF'S EXHIBIT "B."

Showing Counties in North Carolina Through Which Southern Railway Operates and the Horizontal Reduction in Assessment of Real Property, Except Railroad Property Within Right-of-Way, Made by Each County, if Any Was Made, for the Year 1921; *Also Showing Increase in Rate of Taxation,* 1921 *Over* 1920, *in Each of said Counties.*

Name of county.	Horizontal reduction in per cent in assessed value.	Increase in rate of taxation in cents per $100.
Alamance	15%	$0.63
Alexander	33⅓	.56
Bertie	25	.38
Buncombe	0	.39
Burke	33⅓	.43
Cabarrus*	25	..
Caswell	33⅓	.84
Catawba	30	.57
Cherokee	0	.17
Cleveland	15	.28
Davidson	30	.63
Davie	15	.33
Durham	25	.48
Edgecombe	50	.34½
Forsyth	0	.28
Gaston	25	.54
Gates	10	.18
Granville	33⅓	.55
Guilford	0	.15

Name of county.	Horizontal reduction in per cent in assessed value.	Increase in rate of taxation in cents per $100.
Halifax	40	.59
Haywood	25	.38
Hertford	33⅓	.56
Henderson	0	.59
Iredell	0	.24
Jackson	0	.37
Johnston	33⅓	.56
McDowell	0	.35
Macon	0	.29
Madison	33⅓	.67
Mecklenburg	16⅔	.40½
Nash	50	.48
Orange	20	.44
Person	0	.43
Polk	0	.12¼
Randolph	33⅓	.42
Rockingham	25	.51
Rowan	10	.43
Rutherford	10	.40
Surry	25	.48
Swain	0	.68
Transylvania	0	.40
Vance	33⅓	.44¼
Wake	0	.19
Wayne*	33⅓	..
Wikes	20	.55
Wilson	33⅓	.50

43 *Application for Interlocutory Injunction.*

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Comes the above-named plaintiff and shows the Court:

That it has instituted in this Court by bill of complaint an action against A. D. Watts, as Commissioner of Revenue of the State of

*The 1921 tax rates for Cabarrus and Wayne counties have not yet been fixed and, therefore, for those two counties the increase for 1921 is not shown.

North Carolina, and other defendants as shown in said bill which is now referred to and made a part of this application, the object and purpose of the action being to secure from this Honorable Court an order enjoining preliminarily and perpetually the defendants, who are tax assessing, collecting, and enforcing officers of the State of North Carolina and its municipal subdivisions, from collecting or instituting proceedings to collect State, county, municipal, or other taxes levied upon or based upon an illegal overassessment of plaintiff's property, made and certified to them by the Revenue Commissioner of North Carolina, which assessment is contrary to the Constitution and laws of North Carolina and the Constitution of the United States. The bill alleges and sets forth the grounds of un-
44 constitutionality of the assessment and of the statutes of North Carolina under which said invalid assessment was made and under which the illegal taxes will be collected by the defendants named in said bill unless restrained by this Honorable Court, all of which is more fully alleged, set out, and explained in the bill of complaint filed herein.

Plaintiff alleges that the franchise tax levied under Section 82 of the Revenue Act of North Carolina, ratified March 8, 1921, is unconstitutional and that no tax can be levied thereon under any assessment, and the action of the State's tax collecting officer in the execution of said void statute is sought to be enjoined. Said tax is due and payable on or before the 15th day of October, 1921, and if not paid by December 1, 1921, a penalty of ten per cent (10%) is added to such tax.

The ad valorem taxes levied by the counties on said illegal assessment is due on the first Monday in October, and unless paid, the Sheriff may levy and sell property of this plaintiff after November 1, 1921.

The municipal and other taxes levied upon said illegal assessment will become due and the collection thereof will be undertaken prior to the determination of this cause unless the tax collecting officers are restrained.

Wherefore, application is made under Section 266 of the Judicial Code for an interlocutory injunction as prayed for in said bill, and this Court is petitioned to call to his assistance to hear and determine this application two other judges, and that the statutory
45 notice of the hearing of this application be given the Governor and the Attorney General of the State of North Carolina and each of the defendants to the said bill, and an order issue requiring the defendants to show cause at the time and place to be fixed by this Court according to law why said interlocutory injunction should not issue as prayed for.

This application is based upon the verified bill of complaint on file herein.

S. R. PRINCE,
Attorney for Plaintiff.

46 *Order of District Judge on Application for Interlocutory Injunction.*

Filed Sept. 22, 1921.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The application for an interlocutory injunction was presented to me this 22" day of September, 1921; and having read and considered the verified bill filed in this cause, and the application for a hearing for interlocutory injunction under Section 266 of the Judicial Code, and being advised that for the reasons set forth in said application and upon the grounds stated therein and in the verified bill, plaintiff is entitled to have its application heard under Section 266 of the Judicial Code:

It is ordered, that the application be filed and a hearing of the application for an interlocutory injunction be had and proceeded with in accordance with Section 266 of the Judicial Code as amended by Act of Congress approved March 14, 1913, and such hearing is set down for Oct. 6", 1921, at the United States Court rooms in the city of Greensboro, North Carolina, at 11 o'clock a. m.

It is further ordered, that notice of said hearing, not less than five days, shall be given to the Governor and the Attorney General of the State of North Carolina, and to each of the defendants to this suit. And I hereby call to my assistance at said hearing of said application the Honorable Edmund Waddill, Circuit Judge of this Circuit, and the Honorable Henry G. Connor, District Judge of the Eastern District of North Carolina.

47

This September 22nd, 1921, at Greensboro, North Carolina.

JAS. E. BOYD,
District Judge.

Endorsed: Filed in this office Sept. 22, 1921. R. L. Blaylock, Clerk.

48 *Notice of Hearing of Application for Interlocutory Injunction under Judicial Code, Section 266.*

Filed Sept. 26, 1921.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

To Honorable Cameron Morrison, Governor of the State of North Carolina; Honorable James S. Manning, Attorney General of the State of North Carolina; Honorable A. D. Watts, Revenue Commissioner of the State of North Carolina; Honorable Baxter Durham, Auditor of the State of North Carolina; Honorable Benjamin R. Lacy, Treasurer of the State of North Carolina; and to each of the defendants named in the above bill:

You, and each of you, are hereby notified that the Southern Railway Company, plaintiff, has filed its verified bill of complaint in the District Court of the United States for the Western District of North Carolina against A. D. Watts, Revenue Commissioner, et al., praying an injunction against the named tax assessing, collecting and enforcing officers of the State of North Carolina and its municipal subdivisions from collecting or instituting proceedings to collect, State, county, municipal or other taxes levied upon or based upon the alleged illegal over-assessment of plaintiff's property for
49 & 50 the year 1921, made and certified to by the Revenue Commissioner of the State of North Carolina, and also praying that certain tax laws of North Carolina be declared unconstitutional, as will appear from the bill filed herein.

In this cause plaintiff has made application for an interlocutory injunction under Section 266 of the Judicial Code of the United States. The application for such interlocutory injunction will be heard in the United States District Court, in the city of Greensboro, North Carolina, on the 6" day of Oct., 1921, at 11 o'clock a. m. and you, and each of you, are notified to appear at said time and place and show cause, if any, why the interlocutory injunction prayed for should not be granted.

Done in open court this 26" day of Sept., 1921.

JAS. E. BOYD,
Judge.

Endorsed: Filed in this office Sept. 26, 1921 R. L. Blaylock, Clerk.

51 *Subpœna.*

Issued Sept. 26, 1921.

UNITED STATES OF AMERICA,
Western District of North Carolina, ss:

The President of the United States of America to —— ——, Greeting:

You are hereby commanded to appear before our District Court of the United States of America for the Western District of North Carolina, at Greensboro in said district, within twenty days after the service of this subpœna upon you, exclusive of the day of such service, to answer the bill of complaint of the Southern Railway Company this day filed in the Clerk's Office of said court in Greensboro, North Carolina, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

For the Marshal of the United States for the Western District of North Carolina to execute.

Witness the Honorable James E. Boyd, Judge of the District Court of the United States of America for the Western District of North Carolina, and the seal of said court hereunto affixed. Issued at Greensboro in said district, this 26" day of Sept., 1921.

R. L. BLAYLOCK,
Clerk.

52 *Amendment to Bill of Complaint.*

Filed Sept. 30, 1921.

In the District Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al

Plaintiff respectfully represents and shows that since the filing of the complaint in this case it has received information that John A. Lyerly, Sheriff of Buncombe County, who is a defendant herein, has nothing to do with the collection of taxes in said County, but that under a special Act of the Legislature N. A. Collins is the Tax Collector for said County.

Wherefore plaintiff prays that it have leave to make N. A. Collins a party defendant and have process served upon him.

MANLY, HENDREN AND WOMBLE,
Of Counsel for Plaintiff.

53 *Order Making N. A. Collins, Tax Collector, Party.*

Filed Sept. 30, 1921.

In the District Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Order.

Upon consideration of the amendment to the complaint this day filed herein, it is ordered and adjudged that N. A. Collins Tax Collector of Buncombe County, under a special Act of the Legislature, be and he is hereby made a party defendant, and that process issue and be served upon the said Collins.

JAS. E. BOYD,
U. S. Judge.

54 *Motion to Dismiss Bill.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

SOUTHERN RAILWAY COMPANY, Paintiff,

vs.

A. D. WATTS et al., Defendant-.

Motion.

Come now the defendants A. D. Watts and others named as defendants in the complaint filed in this suit, and move the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss this suit, because it is conceded in the complaint that the plaintiff owes and is liable to pay the defendants' taxes on property situated within the State of North Carolina and in the several counties named in the complaint and in the several cities, towns and taxing districts named in the complaint property of the value of $65,542,202.00 on which said property the plaintiff, as it appears in its

said complaint has not paid or tendered payment of the taxes due thereon.

JAMES S. MANNING,
Attorney General of N. C.;
FRANK NASH,
Asst. Attorney General,
Solicitors of the Defendants.

GEO. H. BROWN,
LOCKE CRAIG,
WM. P. BYNUM,
KING, SAPP & KING,
Of Counsel.

55 *Order Denying Motion to Dismiss.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The defendants this date moved the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss the suit upon the grounds stated in said motion.

Upon consideration thereof, the Court denies the motion to dismiss the suit.

It appearing to the Court that the application for a preliminary injunction has been continued by agreement of parties, which agreement has been filed in this cause, and it further appearing that by said stipulation the plaintiff agrees to pay the taxes which may come due as they come due to the counties, cities, towns, and other taxing districts of the State of North Carolina on the valuation stated in the stipulation filed herein this date.

EDMUND WADDILL, JR.,
U. S. Circuit Judge.
JAS. E. BOYD,
H. G. CONNOR,
U. S. District Judge.

56 *Amendment to Bill and Order Making W. L. Murray Party Defendant.*

Filed Oct. 10, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Comes, the plaintiff and moves the Court to enter an order permitting plaintiff to amend its complaint filed in this cause in the following particular:

That D. M. Morris, one of the defendants, sued as Tax Collector of the City of Greensboro, North Carolina, be stricken as defendant and that W. L. Murray, the present Tax Collector of Greensboro be substituted as defendant.

S. R. PRINCE,
Solicitor for Plaintiff.

As counsel for defendants, consent is given to the above amendment, and this may be taken as acceptance of service of the amendment.

WM. P. BYNUM,
Counsel for Defendants.

The above motion for leave to amend is granted, and it is ordered that the amendment be filed.

JAS. E. BOYD,
Judge.

57 *Order Allowing Motion for Leave to Amend Complaint by Adding Thereto Sec. 12½ and Amendment.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The plaintiff this date moved the Court for leave to amend the complaint herein by adding thereto Section 12½, on page 33 of the bill. Upon consideration thereof, it is ordered that the motion be allowed and the amendment be filed.

JAS. E. BOYD, *Judge.*

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Comes, the plaintiff and shows to the Court that since the filing of its bill in this cause on the 22nd day of September, 1921, Honorable Baxter Durham, State Auditor, under date of Sept. 22nd, certified to plaintiff, which certification was received on September 24th, 1921, the so-called franchise or privilege tax assessed under the provisions of Section 82 (6½) of the Revenue Laws, Chapter 34, North Carolina Public Laws of 1921, demanding payment of the aggregate amount of $96,306.35, this sum being one-tenth of one per cent on the aggregate assessed valuation for ad valorem purposes of
58 $96,306,357.00, as fixed for the year 1921 by the Commissioner of Revenue.

Wherefore, plaintiff moves the Court to enter an order permitting plaintiff to amend its complaint by adding thereto the following Section 12½, on page 33, of said complaint.

"12½. Plaintiff further shows that even if the said so-called franchise tax of one-tenth of one per cent is not illegal and void as a

franchise tax but should be decided by the Court to be a valid tax, nevertheless plaintiff is entitled to the relief prayer because the State Auditor has demanded of plaintiff as a franchise tax for the year 1921 the sum of $96,306.35, which is one-tenth of one per cent of the aggregate assessed valuation of plaintiff of $96,306,357.00, fixed for the year 1921 by the Commissioner of Revenue for ad valorem purposes, whereas under the provisions of Sec. 82 (3½) of the Revenue Act of North Carolina of 1921 plaintiff should be required to pay only upon one-half of such value for the reason that the proportion of the capital stock of plaintiff, a foreign corporation, apportionable to North Carolina is less than one-half of the assessed value for taxation of all the property of plaintiff in North Carolina for the year 1921. This demand made by the State Auditor of the plaintiff if enforced denies to plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and violates the Uniformity Clause of Section 3, Article 5, of the Constitution of North Carolina. And plaintiff prays the Court, if the said so-called franchise tax should be held valid, to decree that plaintiff's franchise tax shall be calculated with reference to the sum of one-half of the total assessed value of all property of plaintiff in North Carolina."

S. R. PRINCE,
Solicitor for Plaintiff.

As Counsel for defendants, consent is given to the above amendment, and this may be taken as acceptance of service of the amendment.

WM. P. BYNUM,
Counsel for Defendants.

58½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY
vs.
A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Answer.

James S. Manning,
Attorney-General,
Frank Nash,
Assistant Attorney-General,
Solicitors for the Defendants.

W. P. Bynum,
George H. Brown,
Locke Craig,
Thomas D. Warren,
Sidney S. Alderman,
Of Counsel.

59 *Answer.*

Filed Nov. 30, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Answer.

Come now A. D. Watts and the other defendants in the above entitled suit and, answering the complaint filed by the plaintiff therein, say:

1. The allegations of article one are admitted, except that the allegation that the mileage of railroad owned and operated by the plaintiff in North Carolina is 1,093 miles refers only to the first main lines of said roads and does not include the mileage of second main lines and side tracks, which added to the other raise the mileage of lines of railroad owned and operated by plaintiff in this State to 1,641.80 miles instead of 1,093 as alleged. This does not include the so-called independent lines returned and reported by plaintiff to the Revenue Commissioner, all or a majority of the stock of which is owned by the plaintiff, thus giving it absolute control of those lines also. The mileage of these lines is 423.62, which added to the mileage of the other lines makes a total mileage of railroad owned, operated, leased, and controlled by the plaintiff in North Carolina, 2,065.42 miles. On its main line, running from Washington to Atlanta, Georgia, and passing through the State of North Carolina from Virginia to the South Carolina line, the plaintiff has a double track.

2. The allegations of article two are admitted.

60 3. The allegations of article three and the subsections thereof are admitted, except as hereinafter stated.

Section 64 of the Machinery Act of 1921, referred to in subsection (*e*) of article three of the complaint, did not make it the duty of the Commissioner of Revenue to do the things therein stated, but made it the duty of the State Tax Commission. Thereafter there was enacted a separate statute, ratified March 8, 1921, being Public Laws, Session 1921, p. 388, whereby the powers and duties of the State Tax Commission were transferred to and imposed upon the Commissioner of Revenue. That statute, however, and the said Section 64 of the Machinery Act, of which it was amendatory, did

not require of the Commissioner of Revenue to assess the property of railroads for taxation for the year 1921, or for any year thereafter until 1924. The State Tax Commission had made the assessment of railroad properties in North Carolina for taxation for 1920, and the said assessment had been approved by the General Assembly of North Carolina at the Extra Session of 1920, Chapter 1, and adopted as the basis for taxation for the years 1920 to 1923, inclusive. The only power with reference to assessment of railroad properties given to the Commissioner of Revenue by the Public Laws of 1921 was the power to review such assessment given by the Machinery Act of 1921, Section 28 (*g*).

Section 65 of the said Machinery Act referred to and the proviso thereof quoted in subsection (*f*) of article three of the complaint is the statute particularly controlling the assessment of the property for taxation of railroads doing interstate commerce, operating both within and without North Carolina.

The Section 82 (6½) of the Revenue Act of 1921, referred to and quoted in subsection (*g*) of article three of the complaint, was first enacted by the General Assembly at the Extra Session of 1920, Public Laws of that year, Chapter 1, Section 7*d*, and was carried forward without change in the Revenue Act of 1921. The said Section 82 (6½) was a substitute for Sections 77 and 78 of the Revenue Act of 1919, which imposed a privilege tax on railroads for
61 the privilege of doing intrastate business in North Carolina, based on gross earnings per mile within the State. The provisions of Sections 77 and 78 of the Revenue Act of 1919 had existed in the laws of North Carolina for many years. The said Section 82 (6½) substituted for the old privilege tax on gross earnings per mile a new form of privilege or franchise tax upon all railroads for the privilege of doing intrastate business within North Carolina, based upon the total properties of each of said railroads within North Carolina, as assessed under the Machinery Act for ad valorem property taxation.

The allegations of subsection (*h*) of article three of the complaint are admitted, and it is alleged that the said income tax is not only levied upon railroads, but that the same tax is levied in the same way upon all corporations doing business within North Carolina, foreign and domestic, railroad corporations, and others, equally and without discrimination.

4. The allegations of article four of the complaint are admitted, except as hereinafter qualified or denied. The Revenue Commissioner did not, in 1921, assess the properties of the plaintiff for ad valorem taxation at ninety-six million three hundred and six thousand three hundred and fifty-seven dollars ($96,306,357), as alleged; he made no assessment of the said properties and had no authority under the law to make such assessment. His only authority was to review the assessment of 1920 made by the State Tax Commission and approved by the General Assembly as aforesaid, on an application of the plaintiff to review the said assessment. He did review the assessment and did reduce the same from ninety-six

million six hundred and five thousand six hundred and ninety-four dollars ($96,605,694) to ninety-six million three hundred and six thousand three hundred and fifty-seven dollars ($96,306,357).

It is denied that at the hearing before the Revenue Commissioner facts were adduced showing that the said valuation was in excess of the true actual value of the property as the said term is defined in Section 28 (*e*) of the Machinery Act. Upon the petition of the plaintiff for a further review of the assessment by the State
62 Board of Equalization, the Commissioner of Revenue, sitting with the board and as a member thereof, granted the application for the hearing, and after due consideration of the documents filed and the arguments and statements made, was of the opinion that the valuation theretofore made by the State Tax Commission was fair and just, and with the advice and approval of the other members of the board declined to change or reduce the same further.

5. The allegations of article five of the complaint are denied, except as hereinafter specifically admitted. Further answering that article, the defendants say that the said assessment of the plaintiff's property in North Carolina for 1921, being the assessment made by the State Tax Commission for 1920 and reduced by the Commissioner of Revenue as aforesaid, was the true value in money of the said properties for tax purposes as the same is defined in Section 28 (*e*) of the Machinery Act. It is denied that the State Tax Commission or the Commissioner of Revenue has not advised the plaintiff of the separate amounts or values at which its tangible property and its franchise or intangible property were assessed for taxation. The sum of the values of the said tangible property and of the said franchise or intangible property is the basis of ad valorem taxation, and the plaintiff, as alleged in the complaint, has been informed of the separate and total assessments. The defendants deny that they have knowledge or information sufficient to form a belief as to what advice the State Tax Commission gave the plaintiff in 1920 as to its method of arriving at the assessment of plaintiff's property made by the said Commission for the years 1920 to 1923, inclusive. It is denied that the State Tax Commission used the method of capitalization of the plaintiff's net income for North Carolina exclusively in arriving at the said assessment. As required by Section 64 of the Machinery Act, the State Tax Commission, in 1920, in determining the value of the tangible and intangible property of the plaintiff for purposes of taxation, gave due consideration to all those modes, methods and factors therein required to be considered and used.

And as further required by Section 65 of the Machinery Act,
63 the State Tax Commission gave due consideration to the character of the roadbed and fixed equipment of the plaintiff in North Carolina, to the number of miles of double track in the said State, to the amount of gross and net earnings per mile of road in the State, and to all other factors which would give a greater or less value per mile of road in this State than the average value for the plaintiff's entire system.

By the application of the foregoing methods required by the said

statute to be used, except the capitalization of net income method and the stock-and-bonds method, the State Tax Commission arrived at a figure for the valuation of the properties of the plaintiff in North Carolina in excess of one hundred million dollars ($100,000,000). By due consideration, then, of the capitalization of the plaintiff's net income for the State of North Carolina at 6 per cent, and of the market value of the plaintiff's stocks and bonds and other securities, this figure was reduced in favor of the plaintiff from one which would otherwise have been in excess of one hundred million dollars ($100,000,000) to that finally adopted of ninety-six million six hundred and five thousand six hundred and ninety-four dollars ($96,605,694). The consideration by the State Tax Commission of the method of capitalization of the plaintiff's net income at 6 per cent, instead of working to the disadvantage of the plaintiff, worked to its advantage and had the effect of materially lowering what would otherwise have been a higher assessment.

The Revenue Commissioner did not make an assessment for 1921 and was not authorized by law to make such assessment. He merely exercised the authority given him to review the said assessment of 1920, and reduced the same to ninety-six million three hundred and six thousand three hundred and fifty-seven dollars ($96,306,357), as hereinbefore stated, refusing to reduce the said assessment of 1920, except by the application to it of certain reductions on properties of the plaintiff lying off the right of way, as hereinafter stated.

64 The Commissioner of Revenue used no method in making an assessment for 1921, since he made no such assessment. He merely found that no reason existed for reducing the assessment for 1920, except as hereinbefore stated.

It is denied that the method used in assessing the properties of the plaintiff was illegal and that the result was an over-assessment thereof.

(*a*) It is denied that the method of capitalization of the plaintiff's net income in North Carolina was the method used by the State Tax Commission or the Commissioner of Revenue exclusively. That method was used merely as one consideration in connection with other considerations, as hereinbefore stated. In the application of that method, in so far as it was used, it is admitted that the average net income of the plaintiff in North Carolina for the five-year period from 1915-1919 was obtained by deducting from revenues allocated to North Carolina the average annual taxes paid in said State and the average annual operating expenses allocated to that State The defendants aver that the determination of the net income for North Carolina is justly and fairly arrived at by that method. It is admitted that the allocation of operating expenses by the plaintiff to any branch or division of plaintiff's railroad or to any State is not made with mathematical accuracy. The defendants aver that the allocation of operating revenues to any branch or division of a railroad or to any State is made with mathematical accuracy, and that the allocation of expenses, although it my not be mathematically accurate, is made by the plaintiff itself regularly according to a method devised by the plaintiff; that this method is the most accu-

rate which the plaintiff has been able to devise; that it is impossible to devise a method of such allocation which will be absolutely accurate, and that the system used by the plaintiff approximates accuracy. It is denied that the laws and regulations of North Carolina prescribe the methods of accounting or of allocation of revenues and expenses which the plaintiff shall adopt; the said laws and regulations merely require of the plaintiff reports of gross revenue, gross operating expenses, and net revenue. The plaintiff devises its own methods of allocating these items to obtain the figures re-
65 quired to be reported by the laws of the State. It is denied that under the existing accounting methods of the plaintiff of allocating expenses to North Carolina, operating expenses so allocated are understated and net income overstated. It is admitted that only expenses accruing within that State are charged to State expenses, while some traffic passing through the State is assembled or originates at and is destined to terminal points without the State at which operating expenses accrue, no part of which is apportioned to North Carolina, while the mileage revenue therefrom is apportioned to this State. On the other hand, the defendants aver that enormous amounts of interstate traffic of the plaintiff originate in North Carolina, destined to points without North Carolina; that large operating expenses accrue at the points of origin in this State and are wholly apportioned to this State, whereas only a very small proportion of the mileage revenue from such shipments is apportioned to North Carolina and large proportions of such mileage revenue are apportioned to other States, ac-ros which such shipments are made without the corresponding allocation to those States of any part of the terminal expenses accruing at the points of shipment in North Carolina. The defendants further aver that the same is true as to large amounts of interstate traffic coming from without North Carolina and terminating within North Carolina. For illustration, approximately one train-load of tobacco leaves Winston-Salem, North Carolina, every day over the plaintiff's lines destined for points in other States. In the assembling, preparation and initiating of these shipments there are large terminal expenses at Winston-Salem, all of which are charged in North Carolina expenses, while North Carolina revenue is credited with only a very small mileage proportion of the entire revenues from such shipments. The same thing is true of enormous shipments of granite from Mount Airy, of furniture from High Point, Thomasville and other points in the State, of lumber and other forest products of the State, and of shipments from the cotton-manufacturing belt in the Piedmont section of the State, particularly points like Charlotte, Concord, Gastonia, Greensboro, Spray, and elsewhere. While North
66 Carolina has no large cities like Atlanta or Richmond, it has a great number of smaller cities which are important shipping, receiving, and terminal points for the vast imports into and exports from this rich and highly productive State. The terminal points and expenses in North Carolina, although not concentrated in a few places, are widely disseminated and in the aggregate are very large.

The defendants are informed and believe, and so allege, that more freight origiates at, and is shipped from, Winston-Salem, N. C., over the line of the plaintiff than at or from any other point in its entire system.

In addition, there are located within North Carolina, at Spencer, the largest terminal yards and repair shop in the plaintiff's system, and other large yards at Pomona, North Charlotte, Asheville, and Selma. The defendants are informed and believe, and so allege, that about seventy-five per cent of the operating expenses at these points is applicable to interstate traffic, but that all of said expenses are charged against North Carolina revenue.

It is denied that this method of ascertaining net revenue for North Carolina works to the disadvantage of the plaintiff: (*a*) The defendants deny knowledge or information sufficient to form a belief as to whether the traffic that moves through the State of North Carolina greatly exceeds the traffic originating in and destined to North Carolina, but they aver that traffic originating in North Carolina runs through many other States, which derive great benefit of revenue from shipments for which North Carolina is charged the entire assembling and initial terminal expenses. The defendants further aver that this system of allocation of revenues and expenses devised and used by the plaintiff itself, and which the State Tax Commission adopted, is a method which evens itself up and gives the most nearly accurate allocation to the respective States through which the plaintiff's system runs; otherwise the plaintiff itself would have abandoned this system. (*b*) On information and belief, the defendants deny that the terminal expenses on traffic originating in or destined to North Carolina are much less than those
67 without the State, and they aver that the ratio of operating expenses to operating revenues in North Carolina is truly less than that of the entire system. It is admitted that the operating revenues and operating expenses for the entire system are kept with mathematical accuracy in so far as possible; and that the plaintiff's accounting thereof is done under rules prescribed by the Interstate Commerce Commission and is checked by that body and by certified public accountants. It is denied that the capitalization of the plaintiff's net income for its entire system, the determination therefrom of the value of plaintiff's entire property, and the apportionment then to North Carolina of the result, is the proper method to be used in determining the value of its properties in North Carolina. The defendants admit that the calculations made in the table of figures on page 20 of the complaint are correct. They deny, however, that the proper figure to capitalize was twenty-one million two hundred seventy-four thousand twenty-seven dollars and eighty-nine cents ($21,274,027.89), or that the figures showing the allocation of the result of such capitalization to North Carolina at various percentages, as shown on the table at the bottom of said page, are in any way the measure of the value of the properties of the plaintiff in this State or should properly be considered in arriving at the value of the said properties. The defendants aver that the system of allocation claimed by the plaintiff to be the correct one would

deny to North Carolina the benefit of fair and true property values in this State derived from the business of the plaintiff in, from, through, and into North Carolina: it is averred that the said system would give to other States through which the plaintiff's railroads run unwarranted values which should be given to this State. It is alleged that the capitalization-of-income method pointed out by the plaintiff would have the effect of working greatly to the disadvantage of a State like North Carolina, in and through whose territory the traffic of the plaintiff is dense, highly productive and valuable, and in whose territory the property values of the plaintiff are, therefore, greatly increased, and work greatly to the advantage of a State like Florida, through whose territory the traffic of the plain-
68 tiff is light and much less valuable, and in whose territory, therefore, the property of the plaintiff is much less valuable.

Besides, the defendants aver that the regions traversed by most of the lines of the plaintiff in North Carolina are more rugged and mountainous than those traversed by any other portion of its lines in any other State, and the cost of reproduction of those lines is proportionately higher than that of any other portions of the plaintiff's system. Among these lines in North Carolina having extremely high proportionate cost of reproduction are the line from Salisbury to Asheville of about 141 miles, crossing very rugged and mountainous country and having many costly bridges and tunnels; the line from Asheville to Paint Rock of about 35 miles through altogether mountainous country; the line from Asheville to Murphy of about 122 miles crossing two mountain ranges; the line from Asheville to Spartanburg of about 41 miles, crossing the Saluda range; and the line from Pomona to North Wilkesboro of 100 miles crossing very hilly country. These lines of the plaintiff cross at various places three large ranges of the highest mountains east of the Mississippi River, the Blue Ridge Mountains, the Alleghany Mountains, and the Great Smokies; and no region in any other states through which the plaintiff's line runs is in any way comparable to these parts of North Carolina. As some index of the cost of replacement of these lines through this territory, the defendants show that the actual cost of construction of the Carolina, Clinchfield and Ohio Railroad from Spartanburg, South Carolina, to Johnson City, Tennessee, traversing this same region in Western North Carolina, was $200,000 or more per mile when that road was constructed about the year 1907, when the cost of railroad construction was much less than now.

They further show that cost of construction of railroads since that date have advanced and that it would be impossible for the said C., C. & O. Railroad to be constructed now except at still larger cost. The lines of the plaintiff above referred to have a mileage of about 440 miles. Taking this actual cost of construction of the C.,
69 C. & O. Railroad in 1907 as an index, it would cost $88,000,000 to construct now the said lines of the plaintiff in Western North Carolina, without any consideration of other lines in the State, and without consideration of depots, terminal properties, real estate or other properties. The defendants aver that the cost of replacement of the plaintiff's lines through the mountains and hills of

North Carolina would be so high proportionately as to counterbalance the heavy terminal investment and expenses of the plaintiff of which it complains in other States and to prove that the method of allocation of revenue suggested by the plaintiff would be unfair to North Carolina, and prove conclusively that the assessment of the plaintiff's property for taxation in North Carolina is not excessive and does not import into North Carolina for taxation property or values which should remain in other States.

It is denied that the assessment of the State Tax Commission for 1920 or that the same assessment as reduced in 1921 by the Commissioner of Revenue, amounts to a tax upon property beyond the jurisdiction of the State, or that it is a burden on commerce among the States, or that it violates the commerce clause of the Constitution of the United States. On the other hand, the defendants aver that a use of the method of capitalization pointed out by the plaintiff would result in the exportation from North Carolina into other States of property values which should be taxed in North Carolina and should contribute to the support of that State and its subdivisions.

(*b*) It is admitted that six per cent was the percentage used by the State Tax Commission in capitalizing the plaintiff's net income to the extent that that method was used at all in arriving at the said assessment. The defendants aver that that is a proper percentage for such purpose. They aver that six per cent is the legal rate of interest in North Carolina. They deny that the percentage which should have been used for capitalization of net income was eight per cent or any higher per cent than that used. Although other States through which the plaintiff's lines run may use seven or eight per cent as a basis of capitalization, the legal rate of interest in some of these States is higher than in North Carolina. The defend-
70 ants further aver on information and belief that a great many States other than those listed by the plaintiff on page 22 of the complaint, use the same percentage for capitalization that was used in North Carolina, to-wit: six per cent, and that the said percentage was legal and proper. It is further alleged that the use of a six per cent capitalization of the plaintiff's net income for North Carolina was only one of several factors to which the State Tax Commission gave due consideration as required by law in arriving at the assessment of 1920, and that the consideration of this six per cent capitalization method had the effect of making the assessment less than a consideration of the other factors alone would have made it and resulted to the benefit of the plaintiff. The defendants further aver that interest rates on money show temporary fluctuations while the values of permanent property of railroads do not fluctuate in a corresponding manner. It is denied that ($76,470,312) seventy-six million, four hundred and seventy thousand, three hundred and twelve dollars, or any other sum less than ninety-six million, three hundred and six thousand, three hundred and fifty seven dollars ($96,306,357) is the correct valuation of the plaintiff's property in North Carolina for taxation in 1921.

(c) It is admitted that the law of North Carolina requires that in arriving at the value of the plaintiff's intangible property due consideration be given to the value placed upon the whole property by the public as evidenced by the market value of all capital stock and other securities, the values of which are based upon the earning capacity of the property, but it is denied that the law of North Carolina requires or permits this method to be employed alone to the exclusion of other methods. It is denied that the figures alleged by the plaintiff as representing the value of stocks and bonds, etc., allocated to North Carolina on the mileage proportion basis and on the gross earning basis, respectively, measure the true value of the properties of the plaintiff in North Carolina for taxation. While this stock-and-bonds method is one method to be considered in arriving at the value of intangible property of railroads, the defendants aver that market values of railroad securities and
71 other securities in general are temporarily far below normal and do not represent the true value of property upon the earning capacity of which the said figures are based, and that the value of railroad properties is relatively stable and does not fluctuate in any degree corresponding to the fluctuations in the market prices of such securities.

In answer to the allegation on page 23 of the complaint "that under no one of these accepted tests, viz., capitalization of earnings, and the market value of the stocks and bonds, is the true value of its property as much as the assessment herein complained of," the defendants aver that the statutes of North Carolina neither require nor permit that any one of the said tests be used exclusively. On the other hand, the said statutes require that the value of railroad property for taxation be determined by application of the several factors and tests hereinbefore set forth and that no one of these alone would be an accepted or proper test or method of valuation. The defendants further aver that as hereinbefore stated a consideration of the modes prescribed by law for determining the value of railroad property for taxation resulted in a valuation of the plaintiff's property in North Carolina at a figure above $100,000,000; that the stock-and-bonds method was applied by the State Tax Commission and was also duly considered as required by law along with the capitalization-of-net-income method, and that the consideration of these two methods resulted in a reduction of the valuation of plaintiff's property to the amount at which it was fixed for 1920.

6. Answering the allegations of article six of the complaint as to the so-called tentative figures of the Interstate Commerce Commission, defendants say that these figures are purely tentative and in no way final or binding. They are figures arrived at by engineers of that Commission from an estimation of the value of property of the plaintiff and other railroads based on an inventory as of June 30, 1916, and on prices prevailing June 30, 1914. The price level in general and particularly the cost of railroad construction have very greatly increased since 1914. As an illustration of this, reference is

made to the report of the plaintiff to its stockholders for the
72 year ending December 31, 1919, being its 25th annual report, and to page five thereof, wherein the plaintiff reports that the work of laying a double track on a revised grade of plaintiff's line between Washington and Atlanta had been finished; that as originally contracted and estimated this work was to cost $34,838,000, but that the actual cost of it was $52,134,000, or about fifty per cent greater. This latter sum represents the actual cost of construction of six hundred and twenty-five miles of second track, the cost of laying which is less than that of laying first track, and shows that the said second track between Washington and Atlanta cost $82,884.00 a mile on an average. The year 1914, upon the price level of which the said tentative figures of the Interstate Commerce Commission are based, was actually a subnormal period as to prices with relation both to time before and time after the said year. Therefore, the said tentative figures in no way represent the actual cost of replacement of the tangible property of the plaintiff as of the dates 1920 and 1921.

In addition, these tentative figures do not include the intangible property of the plaintiff consisting of the franchise to be a corporation, the franchise to do business as a corporation, the going concern value, the good will and other intangible property subject to taxation in North Carolina.

To the said tentative figures the plaintiff in the table on page twenty-five of its complaint adds only an estimated value of real estate at $5,000,000, which is an estimate of its land by the plaintiff itself at a value of only about two hundred dollars an acre of right of way, and the defendants aver on information and belief that the land values of the plaintiff in North Carolina are vastly in excess of that sum.

The defendants deny $67,371,142 was the actual value of the plaintiff's rolling stock for either 1920 or 1921, as alleged on page 24 of the complaint. This figure is based on prices as of June 30, 1916, as the plaintiff itself alleges, and prices of rolling stock have very greatly advanced since then. It is further denied that a mileage basis is the proper basis for apportioning such rolling stock to North
Carolina, for the reason that the reports of the plaintiff show
73 that much more than a mileage proportion of its business is carried on in North Carolina and it follows that a greater than mileage proportion of its rolling stock was and is in use in North Carolina and subject to taxation therein for these years.

It is denied that $59,904,438 is the limit of true value of the plaintiff's property in North Carolina for ad valorem purposes. It is averred that the assessment of $96,306,357 for 1921 is the true actual value thereof. It is denied that the said assessment is in excess of the true value and that any illegal tax will be collected thereon. In fact, the plaintiff itself, in its report to the Commissioner of Revenue as of date May 24, 1921, admitted that the taxable value of its property in North Carolina was more than $59,904,438 and that it was as much as $68,000,000. It is denied that the Commissioner of Revenue assessed the plaintiff's property as alleged in the said article

of the complaint; the said assessment was made by the State Tax Commission, and was correct for 1920 and for 1921 as reduced by the Commissioner of Revenue.

It is admitted that the plaintiff does not concede that the valuation found by the Interstate Commerce Commission under the Interstate Commerce Act is the true value of its property for tax purposes as required by the Constitution and laws of North Carolina. On the other hand, defendants are informed and believe and therefore allege that the plaintiff, appearing before the Interstate Commerce Commission for the purpose of securing higher rates, maintained that the value of its property in North Carolina was far greater than that shown by the said tentative figures; that about the time said assessments now in question were made for taxation in North Carolina, the plaintiff was contending before the Interstate Commerce Commission that that body should take as the value of plaintiff's property the plaintiff's investment account which showed property of the plaintiff in North Carolina as allocated on a gross earnings basis to be of the value of $111,308,323; that the plaintiff not only presented the investment account figures but contended as is shown by the decision of the Interstate Commerce Commission in the matter of the said application for increased rates, called Docket Ex Parte
74 No. 74, that "the aggregate value of the property * * * held for and used in the service of transportation, is substantially in excess of the aggregate of the amounts shown as their respective book costs," that is, the plaintiff contended that the actual value of property in North Carolina was in excess of $111,308,323; that when asking for increased rates and to secure the same the plaintiff contended that its property in North Carolina was worth in excess of $111,308,323, as compared with $96,306,357, at which it is assessed for taxation in North Carolina, and as compared with the figure of $59,904,438 which the plaintiff now contends to be its value in this suit attacking North Carolina tax assessments as excessive.

The defendants further show that, using round numbers, the State of North Carolina, in determining the said assessment for 1920, took only 86.4 per cent of the $111,000,000 valuation of the plaintiff's property in North Carolina shown by the plaintiff's investment account, whereas the Interstate Commerce Commission, in the said application to raise rates, took 91.1 per cent of the said investment account figures, and the defendants aver that the said action of the Interstate Commerce Commission is conclusive proof that the North Carolina assessments were in no way excessive.

It is denied that any showing of over assessment of its property was made by the plaintiff to the Commissioner of Revenue or that the said tentative values have any effect to prove that such over-assessment was made. It is denied that it is necessary to recognize the said tentative values in order to prevent discrimination as between the several railroads in the State of North Carolina, and it is denied that either the uniformity clause of the Constitution of North Carolina or the Fourteenth Amendment to the Constitution of the United States is violated by reason of the fact that the 1921 assessment is

not controlled, modified, or measured by the said tentative values.

It is denied that the standard return allowed the plaintiff under the Federal Control Act shows any over-assessment of the plaintiff's property in North Carolina. The said standard return was
75 based upon the test period just before the United States of America entered the World War; the said period was one of sharp depression and was, therefore, not a reflection of the earnings of the plaintiff that may be expected under normal conditions and when the provisions of the Amended Interstate Commerce Act with respect to rates and earnings become effective, nor was it a reflection of the actual value of the plaintiff's property. It is denied that a capitalization of the said standard return as allocated to North Carolina is in any way a test to be considered in arriving at the value of the plaintiff's property for assessment in North Carolina.

7. The allegations of article seven of the complaint are admitted, but the defendants aver that there were no just grounds for protest against the tax paid by the plaintiff in 1920. Its total taxes for 1919 were $971,325.87. For 1920 they were $920,367.05, or $50,958.82 less than the total taxes for 1919 before the revaluation.

8. Section 28 (*a*) of the Machinery Act of 1921 is admitted to be as quoted in article eight of the complaint. It is admitted that the reductions set out in Exhibit "B" to the complaint, referred to in article eight were made by the respective county boards of review and were not revised or changed by the State Board of Equalization and, therefore, became effective. It is denied that the assessment for 1920 as to railroads was in excess of true value. The defendants aver, however, that the assessment for 1920 of real property in general, other than railroad property devoted to purposes of transportation, was in fact in excess of true value for 1921; that the assessments of the property of the plaintiff devoted to transportation, and of that of other railroads of the State, for 1920, were already at their true value, and that the failure of the Commissioner of Revenue to make similar reductions of the assessment of the plaintiff's railroad property resulted in no discrimination and in violation neither of the Constitution of North Carolina nor of the Constitution of the United States.

Furthermore, it is denied that the Commissioner of Revenue declined to consider or to give to the plaintiff the benefit of any similar reduction in the said counties; the defendants aver that although such reductions were not applied to the right of way, lands
76 and structures thereon, that is, strictly railroad property of the plaintiff, they were applied to the property of the plaintiff lying off the right of way exactly as they were applied to other property in general, and that there was no discriminative violation by the Commissioner of Revenue of Section 3 of Article V of the Constitution of North Carolina, and no violation of the Fourteenth Amendment of the Constitution of the United States.

The defendants deny knowledge or information sufficient to form a belief as to what the amount of tax of the plaintiff for 1921 will be, but it is denied that the said tax will be discriminatory against the plaintiff as compared with other taxpayers. The defendants further

aver that the actual total amount of taxes paid by the plaintiff in 1920, in and to the State of North Carolina and the subdivisions thereof, was much less than the total amount paid by it in 1919, before the enactment of the Revaluation Act and the revaluation made thereunder, as hereinbefore alleged.

Further answering the said article eight of the complaint, the defendants aver that the Revaluation Act, Public Laws 1919, Ch. 84, was passed by the General Assembly of North Carolina in an earnest effort to make the tax laws of the State accord with Section 3 of Article V of the Constitution of the State by making the ascertainment of the true value in money of all property in the State the basis of assessment of such property for taxation. This law provided for a complete revaluation of all property in the State, real, personal, and mixed, including railroad property, Section 31, this new valuation to be used as the basis for computing the ad valorem taxes for the years 1920 to 1923 inclusive, when the same should be approved and the tax rates for the State revised by the General Assembly and when the tax rates levied by the counties, cities, towns, and special tax districts should be revised under rules to be laid down by the General Assembly.

The general revaluation of all property in the State was made pursuant to this act. Real estate in general in the State was raised about three times in value above the assessments for 1919. Railroad property in the State, exclusive of property lying off the right of
77 way and assessed by local assessors, was raised to only twice the 1919 assessment. The said revaluation and assessments were thereupon approved and adopted by the General Assembly at the Extra Session of 1920 (August), by Chapter 1 of the Public Laws of 1920, called the Revenue Act of 1920. By this statute the General Assembly adopted the revaluation assessment as the basis for the levy of taxes for the years 1920 to 1923, inclusive. This act, furthermore, revised the tax rates of the State and authorized and made the rules for the revision of tax rates by counties, cities, towns, and special tax districts, which revisions were actually made.

A sharp period of depression, affecting particularly the values of farm products and lands, followed almost immediately the said revaluation under the Revaluation Act, and real property in many counties of the State fell in market value below that at which it was assessed under the revaluation. As a result, in the Machinery Act of 1921, there was enacted Section 28 (*a*) as quoted in article eight of the complaint, which provided that county boards of commissioners and county boards of appraisers and review appointed under the Revaluation Act should sit together jointly, as county boards of review, to determine whether the valuation of real estate in the counties, as a whole, as fixed under the Revaluation Act, was in excess of the fair value of such property at the time of the meeting of the said boards of review. It provided that if it should be found that the assessments of real estate were thus excessive, the boards of review should find the average percentage of excess for their respective counties and report the same to the State Tax Commission. It further provided that the valuation as assessed under the Revaluation Act,

reduced by this average percentage of reduction, should be the valuation at which real estate in the said counties should be assessed for taxation, unless and until changed by the State Tax Commission.

The county boards of review in sixty-seven counties of the State decided to make reductions and reported them to the State Board of Equalization pursuant to these provisions. The assessments
78 of value which had been made under the Revaluation Act were reduced by these percentages and the resulting assessments became the assessments for taxation in those counties. Plaintiff's property lying off the right of way, and which was, therefore, assessed by local assessors, and by them reported to the State Board of Equalization, was reduced along with all other real property in those counties in which such property of the plaintiff was situated and in which such reductions made; and these reductions were allowed.

Inasmuch as real property in general had been raised by the revaluation assessment to three times the former assessment on an average, and the assessment of strictly railroad property by the State Tax Commission had been raised to only twice the former assessment; and inasmuch as the assessments of real property in general for 1920 were in excess of their true values for 1921, the Commissioner of Revenue properly refused to make any reductions of the assessments of strictly railroad property to correspond with the reductions made by the county boards of review on other property including real property of railroads lying off the right of way.

The defendants further aver that while the chief agricultural products of this State decreased in value in the latter part of 1920 and in 1921 more than 300 per cent, the freight rates of the plaintiff and other railroads were increased 25 per cent and their passenger rates were increased 20 per cent. Notwithstanding this, the valuation of the plaintiff's property for taxation in North Carolina as made by the State Tax Commission for 1920 and as reviewed and reduced by the Commissioner of Revenue for 1921 was by no means so great a proportionate increase over the assessment for 1919 as were the corresponding assessments of real property in general throughout the States over the assessment thereof for 1919. The following table gives as an illustration of this the figures for the counties in which are located property of the plaintiff the assessments of which it complains of. The table shows the assessment of real estate in each county named for 1919, the percentage of reduction allowed upon the 1920 assessment, and the assessment for 1920 as reduced by that percentage or the assessment as it is for 1921.

79

County.	1919.	Reduction.	1920 less reduction (1921).
Alamance	$6,844,638	15%	$20,194,408
Alexander	1,667,975	33⅓%	4,351,333
Buncombe	21,862,308	none	60,319,591
Burke	3,651,492	33⅓%	7,365,181
Cherokee	2,833,046	none	4,264,124
Caswell	1,803,197	33⅓%	6,035,442
Cabarrus	6,729,195	25%	22,658,805

County.	1919.	Reduction.	1920 less reduction (1921).
Catawba	4,692,916	30%	18,674,032
Cleveland	7,574,843	15%	23,934,918
Davie	2,294,469	15%	8,481,632
Davidson	6,957,305	30%	21,446,672
Forsyth	14,234,803	none	72,197,173
Guilford	18,884,912	none	85,158,132
Gaston	11,302,506	25%	39,258,217
Haywood	6,120,975	25%	12,994,373
Henderson	4,173,152	none	11,322,157
Iredell	7,373,388	none	26,536,439
Jackson	2,168,624	none	6,608,611
Macon	2,600,353	none	5,201,469
Mecklenburg	23,133,825	16⅔%	77,914,383
Madison	3,241,392	33⅓%	5,578,519
McDowell	2,675,983	none	8,139,746
Moore	4,173,157	25%	8,491,443
Orange	3,916,209	20%	8,068,836
Polk	1,662,018	none	5,043,541
Randolph	5,398,639	33⅓%	12,312,203
Rutherford	4,331,111	10%	17,921,378
Rockingham	8,399,673	25%	35,860,033
Rowan	9,727,065	10%	34,693,926
Swain	2,657,825	none	6,830,926
Surry	5,796,250	25%	13,986,709
Transylvania	2,044,250	none	5,304,466
Wilkes	3,788,058	20%	9,881,602
Bertie	4,055,858	20%	10,459,087
Durham	14,777,122	25%	32,570,135
Edgecombe	7,867,565	50%	17,477,528
Gates	1,986,648	10%	5,068,118
Granville	4,824,621	33⅓%	10,725,430
Halifax	8,675,643	40%	21,382,124
Hertford	2,840,986	33⅓%	7,164,779
Johnston	17,912,383	33⅓%	28,020,099
Nash	7,865,780	50%	18,150,048
Person	2,633,069	none	12,452,278
Vance	4,550,421	33⅓%	11,904,379
Wake	19,342,872	none	53,739,885
Wayne	8,449,151	33⅓%	31,548,855
Wilson	6,323,509	33⅓%	26,934,200

The defendants further attach to this answer, as Exhibit "A," a table which they ask to be taken as part of this answer, which table shows a comparative statement of assessed values in all the counties of the State for the years 1919 and 1920, showing the increases in values assessed under the revaluation over those for 1919 as to various classes of property and in particular as to real estate.

80 This table shows that on an average real property in general in the State was raised three times the assessment for 1919.

9. The defendants deny knowledge or information sufficient to form a belief as to the tax rates which will be levied in the respective counties for 1921, but it is denied that such tax rates, whatever they may be, will be discriminatory against the plaintiff, and the defendants allege that they will be uniform. It is denied that the causes which brought about a reduction in the value of real estate in general in the counties in which reductions were made applied to plaintiff's railroad property. The said reductions in value did apply to real estate of the plaintiff lying off the right of way and not part of strictly railroad property, as to other real estate. It is denied, however, that the said roalroad property decreased in value as did real estate in general. The fall in value of real estate in 1920 and 1921 was due primarily to a radical decline in the selling price of farm products, the chief factor controlling the value of farm lands. Tobacco, cotton, and other farm products of North Carolina brought phenomenally high prices in 1919 and those prices were deemed to be stable and were accepted and taken as the price level on which tax values were based in the revaluation of 1920. The prevailing average price for cotton and tobacco, our principal farm products, for the year 1919, as of which year farm lands were revalued, was approximately forty cents a pound for cotton and fifty-three cents a pound for tobacco. But those prices, as subsequent experience showed, were not stable but were temporarily and abnormally high, as were the land values dependent upon them. In the summer of 1920 and following, those prices fell off more than three hundred per cent and the value of farm lands and other real estate declined sharply with the said decline in prices. Railroads, however, were not so affected. The same volume of crops was moved by them, although farms received greatly reduced prices therefor, and instead of the prices charged by the railroads for their services being reduced, the railroads, including the plaintiff, were allowed an increase of 25 per cent in freight rates and 20 per cent in passenger
81 rates. It is, therefore, denied that the plaintiff should be given the benefit of any reduced assessment on its railroad property by reason of a decline in value of farm lands and other real property which decline does not apply to railroad property.

10. It is denied that the values of the property of plaintiff depend upon the fluctuating values of other property in the State as affected by temporary advances and declines. It is denied that the business of the plaintiff fluctuates directly or in any corresponding proportion with the values of farm lands or other real property, or the prosperity of the State it serves for any one year or temporary period of time. It is denied that the plaintiff's property has decreased in value in 1921 any further than as shown by a comparison of the assessment of the plaintiff's property for 1921 with that for 1920. Although the value of the use of the plaintiff's property may have been depressed to some extent, this is only a temporary situation and there has been no corresponding depression in the value of the plain-

tiff's permanent property and the plaintiff is entitled to no reduction in its taxable values and the failure to make such reduction is denied to be discrimination or contrary either to the uniformity clause of the Constitution of North Carolina or to the Fourteenth Amendment to the Constitution of the United States.

As to the truth of the allegation of the second paragraph of article ten of the complaint, the defendants deny that they have knowledge or information sufficient to form a belief, but they aver that if the earnings for the first six months of 1921 are correctly stated in the complaint they reflect but a mere temporary condition and the defendants are informed and believe that the earnings for the last six months of 1921 will be much larger than for the first six months. The defendants further aver that if the plaintiff's earnings were much less than normal for the first six months of 1921, they were still net earnings and are in no way comparable to the substantial and disastrous losses sustained by the farmers who, in most instances,

82 received far less than the cost of production for their crops, and in favor of whom plaintiff now claims that the tax laws and assessments of North Carolina discriminate against railroads.

The assessed values of real estate, especially farm lands, had been raised under the revaluation in some instances from three hundred to five hundred percent. As hereinbefore stated such real property was raised in valuation about three times on an average. The plaintiff's property was, however, not raised over one hundred per cent. After the allowing of the reduction made in many counties pursuant to the Act of 1921 it still remains that real property generally stands at an increased value very much greater in comparison than the increased value assessed on the plaintiff's property. It is impossible, therefore, that there can be any discrimination against the plaintiff. As showing this, reference is made to the table hereinbefore set forth in article eight and to Exhibit "A."

It is further averred that the Interstate Commerce Commission has fixed the rates for the plaintiff and other railroads on the basis practically of their investment account figures, which for the plaintiff show values of property in North Carolina to be $111,308,323, and that if the plaintiff and other railroads do not earn returns commensurate therewith, they can apply to the Interstate Commerce Commission for further advances of rates. Farmers and other owners of real property in North Carolina have no such forum in which they may seek a remedy to relieve them not only against such decreases in the earnings as the plaintiff alleges it has suffered but against the disastrous losses which the farmers themselves as well as other persons, individual and corporate, have suffered, due to depressed conditions as hereinbefore stated.

11. The truth of the first sentence of article eleven of the complaint is admitted. It is admitted that the railroad assessments prior to 1921 were fixed by a board of three, known as the State Tax Commission, but it is denied that under the laws of 1921 any assessment was fixed by the Revenue Commissioner or will be made by him

until the year 1924. On the other hand, it is averred that
83 the assessment made by the State Tax Commission in and for the year 1920 is and will be, except as reduced by the Commissioner of Revenue to correspond with reductions made on all other real property, the only assessment of property of railroads in North Carolina to be made until 1924. The question of the right of the plaintiff to appeal from an assessment of its property cannot arise until the next assessment is made in 1924, such assessment being made under the laws of North Carolina only quadrennially. The same law which gave other tax payers the right to a review of the 1920 or revaluation assessment, gave the railroads the same right of review before the Commissioner of Revenue, and the plaintiff was granted this review not only once but twice.

The defendants further aver that under the laws and procedure of North Carolina, the writ of certiorari would lie at the suit of the plaintiff to the said Commissioner of Revenue from the Superior Court of that State and that by this writ the plaintiff may at any time take up for review and appeal any proceedings by the said Commissioner of Revenue in which its legal and constitutional rights may be deemed to be violated. It is denied that anything in the tax laws of North Carolina constitutes a denial to the plaintiff of the equal protection of the law, or a violation of the uniformity clause of the North Carolina Constitution.

The defendants further aver that the valuation of which the plaintiff is now complaining in its bill was the valuation fixed by the former State Tax Commission and approved by the Legislature of 1920; that the Act of 1921 conferred upon the Commissioner of Revenue, upon petition of the plaintiff, the power to review the assessment so made by the State Tax Commission and approved by the Legislature of 1920 as aforesaid; that the plaintiff did not appeal from, or in any way invoke an interference with the valuations fixed by the State Tax Commission and approved by the Legislature in Extra Session of 1920, as aforesaid, but did petition the Commissioner of Revenue to reduce such value under the power conferred upon him by the Act of 1921; that, as hereinbefore stated, the said Commissioner of Revenue did decline to reduce said values,
84 and if the plaintiff felt itself aggrieved by the action of the Commissioner in this particular, then it was competent for the plaintiff by application to the court for a writ of certiorari to have had the action of the Commissioner of Revenue in this manner reviewed by the courts of the State, and its grievances, if any, redressed.

12. The defendants deny that the so-called franchise tax levied under the Revenue Act, Section 82 (6½), is a property tax or an ad valorem tax based on the value of property as alleged in article twelve of the complaint. It is averred that the said tax is an excise, franchise, or privilege tax imposed upon the privilege of doing a strictly intrastate business within the State of North Carolina; that the said excise, franchise or privilege tax, being levied upon the plaintiff in addition to the ad valorem property tax levied by counties, cities,

towns, and special taxing districts, does not and cannot constitute double or unequal taxation and is violative neither of Section 3 of Article 5 of the Constitution of North Carolina, nor of the Fourteenth Amendment to the Constitution of the United States. It is denied that the ad valorem assessment of the plaintiff's properties is excessive, iniquitous or damaging, and that the franchise or privilege tax of 1-10th of 1 per cent of said assessment is in any way excessive, iniquitous, damaging or illegal. It is denied that the said tax is levied under the guise of a franchise tax, but the defendants aver that it is a true franchise or privilege tax, not a property tax, and that it is entirely within the power of the State of North Carolina to levy the said franchise or privilege tax in addition to ad valorem property taxation, and that by reason of the fact that the said franchise or privilege tax is admeasured, not by any earnings from interstate commerce nor by any properties outside of North Carolina, but only by the total properties of the plaintiff within the State of North Carolina and used in the conduct of the business of the plaintiff within that State, the said tax is in no way a burden upon interstate commerce; that it is not a tax for the privilege of engaging
85 in interstate commerce, nor its payment made a condition precedent thereto, and that it violates no part of the Constitution of the United States.

12½. The allegations of article 12½, the same being an amendment to the complaint, are denied, except that it is admitted that the State Auditor has demanded of the plaintiff as an excise, franchise or privilege tax for 1921, upon the plaintiff for the privilege of exercising its franchise in this State, the sum of $96,306.36, the same being the result of a calculation based upon 1-10th of 1 per cent of the value of the property, tangible and intangible, of the plaintiff in this State, assessed for ad valorem tax, used as the measure of the extent to which the plaintiff is exercising its franchise (the privilege of engaging in intrastate commerce) in this State. The defendants deny that the Commissioner of Revenue made the assessment of the plaintiff's properties, or that he has ever assessed the same or will do so until the year 1924. The defendants aver that the said demand of the State Auditor upon the plaintiff was lawful and that the said tax was and is lawfully due to the State of North Carolina.

Further answering, the defendants aver that Section 82 (3½) of the Revenue Act has no application to railroads or to the franchise or privilege taxes on railroads; that it is a section which was enacted in 1920 and was specifically limited in its application to taxes on corporations as levied in Section 82 of the Revenue Act of 1919; that railroads and the franchise taxes thereon, were not included in any part of said Section 82 of the Revenue Act of 1919; and that when Section 82 (6½) was inserted in that section in 1920, as hereinbefore stated, shifting the provision for franchise tax on railroads to this position as a sub-section of the said Section 82, it was not intended to make the said Section 82 (3½) applicable to the said Section 82 (6½); that the said Section 82 (3½) does not apply, and never has, applied to railroads, taxes on railroads. It is denied that

the demand of the State Auditor, or the failure to apply to the
86 plaintiff the provisions of Section 82 (3½), violates either the Fourteenth Amendment to the Constitution of the United States or the Constitution of North Carolina.

13. The allegations of article thirteen of the complaint are denied

14. The allegations of article fourteen of the complaint are denied The defendants allege that it is perfectly competent for the State of North Carolina, after taxing the property of the pjlaintiff ad valorem, to levy upon the plaintiff an additional tax for the privilege of engaging in intrastate commerce in this State and an additional income tax of three per cent on its net income, which said income tax is levied equally upon all other corporations without discrimination.

15. The allegations of article fifteen of the complaint are denied.

16. It is admitted that the plaintiff will owe to the State, counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment of its property for taxes in the State of North Carolina, and the defendants aver that the said legal assessment is that fixed for 1920 as reduced for 1921 hereinbefore referred to.

The defendants further aver that the plaintiff itself has admitted in its report to the State Tax Commission hereinbefore referred to that it owes taxes on an assessment upon at least $68,000,000.

17. Answering the allegations of article seventeen of the complaint, it is denied that the said assessment is illegal and it is denied that this suit is brought to avoid a multiplicity of suits. It is denied that the said assessment is invalid; it is denied that unless the tax collecting officers of the several counties and municipalities are restrained, they will proceed to collect any illegal tax upon any illegal assessment. On the other hand, the defendants aver that the taxes which the said officer will proceed to collect are valid and lawful; that they of right will become a first lien upon the property of the plaintiff in North Carolina if not paid, as is the case with taxes upon all real property; it is denied that the said rightful lien will constitute a
87 cloud upon the title to said property against which equity should grant relief; it is denied that the plaintiff will be damaged by the remedies for collection of the said lawful and said valid taxes, and it is denied that the plaintiff has no adequate remedy at law.

Prayer.

Wherefore, The defendants, having fully answered the complaint filed in this suit, pray the Court that every and singular the prayers of the said complaint be denied and that the same be dismissed at the costs of the plaintiff.

JAMES S. MANNING,
Attorney General of North Carolina;
FRANK NASH,
Asst. Attorney General of North Carolina,
Solicitors for the Defendants.

WM. P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

(Signed) JAMES S. MANNING,
Attorney General of N. C.

(Signed) FRANK NASH,
Asst. Atty. General of N. C.

WM. P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

88 A. D. Watts, being duly sworn, says that he is one of the defendants in the above entitled suit, that he has read the foregoing answer to the complaint, and that it is true of his own knowledge except as to matters therein stated on information and belief, and as to them he believes it to be true.

A. D. WATTS.

Sworn to and subscribed before me this 11th day of November, 1921.

W. P. STACY,
Associate Justice N. C. Supreme Court.

EXHIBIT "A."

Comparative Statement of Taxable Values for the Years 1919 *and* 1920, *Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral, and Quarry Properties, Average Value per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed with County Supervisors.*

(NOTE.—This statement does not include railroad and public service corporations, banks, and corporate excess assessed by the State Tax Commission.)

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Alamance, 1919.....	257,742	$2,786,845	$10.81	$2,058,055	$6,844,638	$5,532,968	$11,377,606
Alamance, 1920.....	262,836	9,966,036	37.92	7,159,464	24,934,832	10,537,710	35,472,542
Alexander, 1919.....	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920.....	165,761	4,864,885	29.30	681,423	6,527,000	1,956,886	8,483,886
Alleghany, 1919.....	143,309	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920.....	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919.....	328,634	2,663,408	8.11	964,020	4,379,115	3,781,961	8,161,076
Anson, 1920.....	329,715	10,529,114	31.93	2,855,697	13,384,811	6,831,284	20,216,095
Ashe, 1919.....	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920.....	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919.....	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920.....	130,932	3,863,827	29.51	308,197	4,793,754	1,133,928	5,927,682
Beaufort, 1919.....	379,913	3,422,611	9.00	2,534,192	6,365,173	4,231,976	10,597,149
Beaufort, 1920.....	396,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919.....	450,883	3,040,339	6.74	862,130	4,055,859	3,467,887	7,523,746
Bertie, 1920.....	400,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919.....	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
90 Bladen, 1920.....	524,585	10,092,335	19.24	794,790	11,630,040	3,418,325	15,048,365
Brunswick, 1919....	476,230	2,406,552	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920.....	502,593	5,477,845	10.90	970,035	7,953,027	2,017,305	9,970,332
Buncombe, 1919.....	312,643	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797

Buncombe, 1920	.....	.....	....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920	316,304	7,164,477	22.65	1,932,615	11,047,772	4,793,304	15,841,076
Cabarrus, 1919	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920	222,036	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919	227,055	1,809,693	7.97	669,221	3,502,721	2,142,059	5,644,780
Caldwell, 1920	258,296	7,792,632	30.17	2,896,422	13,257,242	4,458,020	17,715,262
Camden, 1919	145,857	1,083,289	7.42	58,607	1,288,061	672,329	1,960,390
Camden, 1920	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919	239,554	1,703,631	7.11	1,056,084	2,993,060	1,586,379	4,579,439
Carteret, 1920	233,162	7,972,149	34.19	1,650,790	10,405,339	2,940,095	13,345,434
Caswell, 1919	262,748	1,686,517	6.42	116,680	1,803,197	2,188,466	3,991,663
Caswell, 1920	268,746	8,743,808	32.54	309,340	9,053,148	2,920,697	11,973,845
Catawba, 1919	256,932	2,460,000	9.58	1,604,830	4,692,916	5,370,515	10,063,431
Catawba, 1920	254,423	12,339,008	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919	404,913	3,063,242	7.04	504,565	4,082,437	3,551,644	7,644,081
Chatham, 1920	435,773	10,063,328	23.09	1,243,459	11,813,037	4,594,017	16,407,054
Cherokee, 1919	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919	99,967	1,159,788	11.60	582,677	2,007,621	1,778,608	3,786,229
Chowan, 1920	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919	278,395	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920	277,843	16,422,057	59.11	4,554,698	28,158,726	11,168,356	39,327,082
Columbus, 1919	458,631	3,429,606	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920	.....	.....	....	.....	15,789,229	6,600,000	22,389,229
91 Craven, 1919	364,212	2,421,364	6.65	4,354,543	7,617,226	4,097,447	11,714,673
Craven, 1920	323,112	15,488,629	47.94	13,256,829	28,745,458	9,352,424	38,097,882
Cumberland, 1919	338,497	3,116,070	9.21	2,513,375	6,348,011	4,990,251	11,338,262
Cumberland, 1920	358,317	12,835,535	35.82	7,393,804	20,522,039	7,567,734	28,089,773
Currituck, 1919	148,426	1,513,584	10.20	.....	1,733,291	705,677	2,438,968
Currituck, 1920	125,080	4,541,124	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1919	208,400	494,859	2.37	100,929	626,963	301,642	928,605
Dare, 1920	.....	.....	....	.....	2,282,743	593,808	2,876,551
Davidson, 1919	35,442	.....	....	.....	6,957,305	3,806,554	10,763,859
Davidson, 1920	355,066	15,295,793	....	6,611,775	30,638,102	9,691,903	40,330,005

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Davie, 1919	160,640	1,529,050	9.52	358,529	2,294,469	3,043,548	5,338,017
Davie, 1920	162,798	7,224,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894
Duplin, 1920	457,279	23,071,185	50.45	1,100,364	24,211,549	7,285,518	31,497,067
Durham, 1919	178,534	3,569,232	19.99	8,021,399	14,777,121	20,808,813	35,585,934
Durham, 1920	182,608	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	303,562	4,131,420	13.60	3,036,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,680	2,871,776	12.45	9,546,925	14,234,803	22,223,137	36,457,990
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,486	9,172,680
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,700	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,506	8,192,666	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,289	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,986,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	326,225	5,631,242	1,663,562	7,294,894
Graham, 1919	177,414	984,505	5.55	28,350	2,132,988	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,869,736	1,337,240	6,206,976
Granville, 1919	319,516	2,839,542	8.88	1,267,086	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	38.20	3,463,640	16,088,145	6,775,885	22,864,030
Greene, 1919	159,369	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,466	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,587	48,173,459
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,889	5,425,881	10,168,771

Harnett, 1920	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919	321,154	3,037,607	9.45	1,779,507	6,120,975	2,762,717	8,883,692
Haywood, 1920	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,423,194
Hertford, 1919	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,869
Hertford, 1920	201,537	8,738,122	43.36	1,991,046	10,747,168	3,609,665	14,356,833
92 Hoke, 1919	224,703	2,129,757	9.48	300,364	2,653,091	2,020,935	4,674,026
Hoke, 1920	221,230	9,967,450	45.05	944,313	11,244,263	2,995,910	14,240,173
Hyde, 1919	275,961	1,540,190	5.58	40,230	1,619,250	1,071,108	2,690,358
Hyde, 1920	420,604	11,837,110	28.14	443,911	12,281,021	2,035,801	14,316,822
Iredell, 1919	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920	364,507	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919	291,748	1,555,849	5.33	188,013	2,168,624	1,993,645	4,162,269
Jackson, 1920	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919	481,735	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920	498,946	32,620,897	65.38	7,092,072	42,030,148	15,477,315	57,507,463
Jones, 1919	291,477	1,666,958	5.72	260,788	1,969,921	1,378,496	3,348,417
Jones, 1920	294,634	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919	155,733	1,467,390	9.42	926,313	2,735,378	2,144,202	4,679,580
Lee, 1920	163,139	6,712,698	41.15	1,019,819	8,706,469	3,371,944	12,078,413
Lenoir, 1919	222,375	2,205,289	9.92	2,329,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920	239,868	20,753,505	86.52	11,629,585	33,857,010	10,910,400	44,767,410
Lincoln, 1919	179,225	2,119,195	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920	193,391	7,504,532	38.80	2,009,709	12,584,088	5,417,219	18,001,307
Macon, 1919	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920	275,716	5,011,838	18.18	189,631	5,201,469	1,330,869	6,532,338
Madison, 1919	262,922	2,108,634	8.02	392,267	3,241,392	2,617,167	5,858,559
Madison, 1920	278,933	7,576,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,956,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	44.72	2,699,065	15,613,311	6,799,760	22,413,071
McDowell, 1919	254,751	.....	....	.....	2,675,983	1,042,136	3,718,119
McDowell, 1920	241,210	2,814,834	11.67	1,540,981	8,139,746	3,861,589	12,001,335
Mecklenburg, 1919	313,806	4,032,705	12.85	13,112,770	23,133,825	15,082,064	38,217,889
Mecklenburg, 1920	314,277	14,423,868	67.31	56,054,830	93,500,878	33,585,655	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,203	4,340,208	1,133,117	5,473,325

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

	Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
	Montgomery, 1919...	288,986	1,766,532	6.11	629,642	2,858,839	2,478,702	5,337,541
93	Montgomery, 1920...	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
	Moore, 1919.....	415,165	3,178,355	7.65	1,871,452	5,434,221	3,005,237	8,439,458
	Moore, 1920.....	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
	Nash, 1919.....	335,415	3,878,799	11.50	3,219,117	7,865,680	8,391,768	16,257,448
	Nash, 1920.....	323,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
	New Hanover, 1919.....	92,962	2,100,440	22.59	10,087,280	14,941,453	5,406,709	20,348,162
	New Hanover, 1920.....	114,132	3,171,311	28.05	14,309,005	37,517,377	12,528,021	50,045,398
	Northampton, 1919.....	318,278	3,705,130	11.64	623,790	4,463,235	4,436,914	8,900,149
	Northampton, 1920.....	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
	Onslow, 1919.....	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
	Onslow, 1920.....	416,808	7,308,697	20.69	992,565	10,807,997	2,756,647	13,564,644
	Orange, 1919.....	241,018	1,951,875	7.78	1,051,230	3,916,209	3,078,757	6,994,966
	Orange, 1920.....	244,404	7,866,281	32.19	2,219,764	10,086,045	6,222,234	16,308,279
	Pamlico, 1919.....	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
	Pamlico, 1920.....	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
	Pasquotank, 1919.....	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
	Pasquotank, 1920.....	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
	Pender, 1919.....	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
	Pender, 1920.....	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
	Perquimans, 1919.....	151,630	1,431,991	9.44	473,929	2,009,068	1,684,783	3,693,851
	Perquimans, 1920.....	135,126	4,579,632	33.89	1,035,330	5,739,609	2,359,005	8,098,714
	Person, 1919.....	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
	Person, 1920.....	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,076,795
	Pitt, 1919.....	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
	Pitt, 1920.....	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,391	61,871,989
	Polk, 1919.....	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
	Polk, 1920.....	130,925	3,221,231	24.61	403,878	5,043,541	3,691,363	8,734,904

Randolph, 1919	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920	489,717	13,352,406	27.27	2,842,531	18,468,305	7,049,532	25,517,837
Richmond, 1919	271,037	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,762
Richmond, 1920	298,155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919	508,290	5,661,400	11.14	2,326,580	9,063,675	8,063,294	17,126,969
Robeson, 1920	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919	345,078	3,213,287	9.08	2,215,162	8,399,673	7,917,904	16,317,477
Rockingham, 1920	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919	530,046	3,850,395	7.26	678,681	4,539,778	4,864,205	9,403,983
Sampson, 1920	578,092	16,169,478	28.00	2,181,805	22,717,990	9,305,331	32,023,240
Scotland, 1919	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471
Stanly, 1919	228,929	1,794,885	7.84	1,109,296	4,727,603	3,983,469	8,711,172
94 Stanly, 1920	245,668	10,574,057	43.04	3,745,636	21,225,000	10,608,893	31,833,893
Stokes, 1919	274,915	2,364,379	8.60	212,216	2,618,965	3,512,301	6,131,266
Stokes, 1920	286,724	10,328,827	36.02	544,334	10,873,161	4,310,595	15,183,756
Surry, 1919	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845,186	26,374,605
Swain, 1919	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919	197,595	1,518,091	7.68	382,984	2,044,250	1,308,115	3,352,365
Transylvania, 1920	198,554	4,684,341	23.59	462,625	5,304,466	2,597,049	7,901,515
Tyrrell, 1919	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830
Union, 1919	389,203	2,975,210	7.65	1,714,833	5,092,979	6,205,125	11,298,104
Union, 1920	392,429	15,605,830	39.77	4,671,356	21,444,971	10,172,675	31,617,646
Vance, 1919	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,175	10,121,596
Vance, 1920	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,735	26,519,301
Wake, 1919	531,678	5,703,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920	506,877	23,181,356	45.73	25,987,726	53,739,885	18,726,589	73,900,221
Warren, 1919	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919	200,868	1,586,739	7.90	501,569	2,180,780	1,556,516	3,737,296

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Washington, 1920.....	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919.....	207,881	1,632,998	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920.....	217,097	6,750,358	31.09	501,234	8,820,897	2,419,708	11,240,605
Wayne, 1919.....	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920.....	339,270	27,607,644	81.37	14,860,093	47,323,132	17,666,582	64,989,714
Wilkes, 1919.....	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920.....	469,130	7,999,140	17.05	880,767	12,352,008	4,357,959	16,709,962
Wilson, 1919.....	223,631	2,866,661	12.82	3,109,243	6,323,509	9,005,000	15,328,509
Wilson, 1920.....	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,562	60,470,862
Yadkin, 1919.....	211,977	1,999,500	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920.....	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919.....	174,935	1,142,880	6.53	83,079	1,335,074	1,204,819	2,539,893
Yancey, 1920.....	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

95 *Consent Decree.*

Filed Oct. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The following stipulation is entered into between counsel for Plaintiff and the Attorney General of North Carolina and his associates as counsel for all defendants, for each of which defendants they have entered an appearance.

It is agreed that in order that the defendants may have sufficient time in which to prepare the defense, the application for an interlocutory injunction under Section 266 of the Judicial Code is, with the consent of Court, continued until such date as the Court may select following January 1, 1922.

The foregoing continuance being agreed upon and it appearing that before the hearing and determination of the application certain taxes will come due to the State of North Carolina and to the counties, cities, towns and other taxing districts; Therefore it is agreed by the Attorney General of North Carolina and his associates as representing all of the defendants, that if the Southern Railway Company pays the taxes it agrees hereinafter to pay, then no further or other taxes sought to be enjoined in the bill will be demanded or collected or any action or suit of any character begun to collect or any penalty assessed for the non-payment thereof, until the further order of the Court or pending this action.

The Southern Railway Company agrees that it will pay when due in accordance with the laws of the State of North Carolina to all counties, cities or towns, special school districts, or other special taxing districts all taxes that may be due such county, city, special school or other special taxing districts of the State, on its proper proportionate share of an aggregate ad valorem assessment against plaintiff of sixty million dollars.

The Attorney General of North Carolina agrees that he will take all necessary action to have the Commissioner of Revenue certify to the several counties and taxing districts of North Carolina their proper proportion of an assessment of 60 million dollars as soon after the date hereof as may be practicable and, if possible, within such period as will enable the Railway Company to take advantage of any discount that it may be entitled to under the law.

It is agreed between the parties that the Southern Railway Company is not to demand a receipt in full for its 1921 taxes in consideration of the payment it makes, but is to receive a receipt for the amount of the taxes paid, and the amount of taxes so paid shall be in full of said taxes due if an assessment shall be finally fixed at a sum not in excess of sixty million dollars, or such payment shall be a credit upon all taxes that may be due if the assessment of
96 plaintiff's property for ad valorem tax purposes for the year 1921 shall be finally fixed in excess of said sixty million dollars.

It is further agreed that if defendants desire to file an answer prior to the hearing of the application for an interlocutory injunction they shall file such answer or any motion or other pleading they desire to file by December 1, 1921, and furnish opposing Counsel with copies thereof. Plaintiff shall have until December 24th, 1921, to file any motion or reply pleading and any affidavits in support of bill or motion for interlocutory injunction or in reply and furnish opposing Counsel with copies thereof. Defendants shall have until January 10, 1922, to file affidavits in support of their answer or in reply and plaintiff shall have until hearing to file reply affidavits.

This stipulation to become effective and filed in this Court upon approval hereof by the Court.

At Greensboro, N. C., this 6th day of October, 1921.

S. R. PRINCE,
MANLY, HENDREN & WOMBLE,
A. B. ANDREWS,
Attys. for Plaintiff.
JAS. S. MANNING,
Attorney General of No. Ca.;
GEO. H. BROWN,
WM. P. BYNUM,
KING, SAPP & KING,
Counsel for Defendants.

Approved Oct. 6, 1921.
EDMUND WADDILL, JR.,
U. S. Circuit Judge.
JAS. E. BOYD,
H. G. CONNOR,
U. S. District Judges.

97 In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al

Affidavits in Support of Plaintiff's Application for Interlocutory Injunction.

Filed Dec. 24, 1921.

S. R. Prince,
Solicitor for Plaintiff.
L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
Of Counsel.

98 *Affidavit of R. Murray Hubbard.*

Filed Dec. 24, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Affidavit of Murray R. Hubbard in Support of Plaintiff's Application for Interlocutory Injunction.

STATE OF GEORGIA,
County of Calhoun:

Murray R. Hubbard, being first duly sworn, says:

That from 1900 to 1904 he was Secretary of the Kentucky Railroad Commission and from 1904 to date has been con-
98½ tinuously in the service of either the Southern Railway Company or its affiliated lines or the United States Railroad Ad-

ministration, his duties being to return for taxation the property of the Southern Railway Company and its affiliated lines in the several states traversed by them and to appear before the tax boards of the several states in the manner of the assessment thereof. At the present time he is Tax Commissioner of Southern Railway Company and resides at Atlanta, Georgia.

That under the Revaluation Act of North Carolina, approved March 11, 1919, the property of every citizen of the State was to be valued at its true value in money, and in accordance with Section 31 of said Act there was to be made a complete revaluation of the property of railroads. The Tax Commission made a tentative assessment for 1920 of Southern Railway's properties, the Southern Railway Company excepted thereto, and at the hearing affiant proved that the net earnings of Southern Railway Company for the System as a whole showed an average for the five years of $21,889,648.00, which sum, capitalized at 7%, showed a valuation for the System of $312,709,260.00 and a valuation for North Carolina of $68,170,618.00 under the gross earnings ratio of 21.8%. Affiant also proved the total par value of the outstanding stocks and bonds of Southern Railway Company and offered to agree with said Tax Commission upon the fair market value of said stocks and bonds, if the
99 Commission should desire to make the assessment under that plan. Affiant proved the amount of gross revenue and operating expenses allocated to the State of North Carolina for the five year period 1919-1915 and also the amount of taxes paid in said State, and that the average annual net earnings so arrived at during said five year period were $6,117,625.00, but affiant made proof in connection therewith of the fact that operating expenses so allocated to North Carolina were understated and that the average net earnings of $6,117,625.00 was not a fair basis for valuation of the property in North Carolina and gave at length the reasons therefor, which reasons are briefly those set out in the bill filed herein. Affiant further offered proof that the annual return upon capital invested in banking, merchandise, and other enterprises in North Carolina was at least 8%; that no railroad securities yielding 6% were at the time selling for their par value in the market; that railroads enjoying the highest credit of any in the country including Southern Railway Company were paying as much as 7½% for money, and that these facts should be considered by the Commission in determining what was a fair percentage of capitalization. The Tax Commission concluded to use a plan of capitalizing the net earnings in order to arrive at the true value in money of the property of Southern Railway Company in North Carolina and at first found a value, arrived at by capitalizing at 7% North Carolina net operating reve-
100 nue for years 1919-1915 without making deduction for taxes paid in the State of North Carolina, which, for the year 1919, amounted to more than nine hundred twenty-two thousand dollars. The value thus arrived at was $103,730,071.00, but affiant protested so vigorously against the failure to make a deduction of the amount of taxes paid that the Tax Commission thereafter changed its plan and arrived at the assessment of $101,960,400.00 by capitalizing the

average net earnings in North Carolina for the five years 1919-1915, amounting to $6,117,625.00, but changed the percentage of capitalization to 6% instead of 7% which had been used before deducting taxes. That said sum, $101,960,400.00 was determined by the Tax Commission to be the true value in money of the property in North Carolina of Southern Railway Company and the independently operated lines, Atlantic & Yakdin Railway Company, High Point, Randleman, Asheboro & Southern Railroad Company and Yadkin Railroad Company, and from said sum of $101,960,413.00 the Tax Commission fixed and deducted a valuation of $4,104,710.00 for the Atlantic and Yadkin Railway Company; of $688,895.00 for the High Point, Randleman, Asheboro and Southern Railroad Company; and of $561,114.00 for the Yadkin Railroad Company, after which deductions it found the valuation of Southern Railway Company to be $96,605,694.00. Affiant says that said valuation of $96,605,694.00 finally adopted was not reduced at all from a figure in excess of $100,000,000.00 by a due consideration of the capitali-
101 zation of plaintiff's net income for the State of North Carolina at 6 per cent, nor of the market value of the plaintiff's stocks and bonds and other securities. Affiant says that said Tax Commission did nothing other than to find that $6,117,625.00 was average net earnings allocated to North Carolina for the five years 1919-1915; that 6% was the figure for capitalization, and that a 6% capitalization of $6,117,625.00 showed for North Carolina a valuation of $101,960,413.00 for Southern and the other lines before mentioned, and then fixed the respective valuations set out for each of said railroads, of which total valuation the value of the Southern was found to be $96,605,694.00. Notwithstanding the proof above set forth and with no proof to the contrary before the Commission, it adhered to its assessment of $96,605,694.00, upon which amount affiant thereafter paid taxes for the year 1920; said payments were made under protest.

That the Commissioner of Revenue of the State of North Carolina on June 21, 1921, heard the application of affiant for a review of Southern Railway's 1921 assessment. At this hearing affiant made proof as follows:

(1) As to error of method used in 1920 by the State Tax Commission in fixing the value of its property at $96,605,694.00, as set forth above.

(2) That 6%, the figure used for capitalization of net income, was too low.

(3) That the market values of railroad securities in 1921
102 were materially less than on May 1, 1919. That the cost of materials used generally in railroad construction was much less in 1921 than in 1920 or at May 1, 1919.

(4) That the average net income allocated to North Carolina should not be used for capitalization in order to determine the value of the property in the State because in said allocation under exist-

ing methods the operating expenses were understated, with the result that net income was overstated.

(5) That the average annual net income of Southern Railway Company as a whole for the five year period 1920-1916 was $21,274,027.89. That the true value in money of the property could be fairly ascertained by capitalizing the aforesaid sum at 8% or certainly at not less than 7% and then apportioning to North Carolina either a road mileage or gross earnings proportion of the amount thus ascertained to be the true value in money of the property in all states. That the values thus ascertained for the system as a whole were as follows:

Capitalization at 8%	$265,925,349.00
Capitalization at 7%	303,914,684.00

And that the true value in money of the property in North Carolina thus ascertained would be as follows:

103 Eight per cent capitalization—

On road mileage basis 20.1%	$53,450,995.00
On gross earnings basis 22%	58,503,577.00

Seven per cent capitalization—

On road mileage basis 20.1%	$61,086,851.00
On gross earnings basis 22%	66,861,230.00

(6) That the application of plaintiff, dated May 24, 1921, to the Commissioner of Revenue for a review and reduction of the aforesaid assessment of $101,964,013.00 (of which total the valuation of Southern was $96,605,694.00) stated the affiant's belief that on May 1, 1921, the value of the Southern's owned, leased, and operated lines in North Carolina (which included the Atlantic & Yadkin Railway, High Point, Randleman, Asheboro & Southern Railroad, and the Yadkin Railroad) was $68,170,618.00. That at the hearing of said application before the Commissioner of Revenue on June 21, 1921, affiant explained to said Commissioner that the valuation of $68,170,618.00 was determined by capitalizing net earnings for the years 1919-15, which were the only figures available to him upon May 24, 1921. That upon June 21, 1921, the net earnings for the years 1920-16 were known to affiant to be $21,274,027.89, and that affiant then believed and stated the highest true value which reasonably could be fixed for the Southern and aforesaid railroads in North Carolina was $66,861,230.00, as before set
104 out. Affiant states further that at the time of such presentation to the Commissioner of Revenue the tentative value of the property of Southern Railway made by the Interstate Commerce Commission, as set forth in the bill on pages 24 and 25 was not known to him.

Affiant says that under date of July 21, 1921, the Commissioner of Revenue advised him by letter that he had arrived at a value of

the Southern Railway's properties of $102,504,843.00. That value included other independently operated lines, which being deducted, left as a value of the Southern Railway's property in North Carolina the sum of $96,605,694.00 which said value was further reduced by reductions in real estate off the main right of way to the final figure of $96,306,357.00. Affiant gave notice to the Commissioner of Revenue of an appeal to the State Board of Equalization. He was thereafter advised that the law did not permit a hearing by the State Board of Equalization and the matter was reheard by the Commissioner of Revenue and again proof was offered on the various points above set forth to show the excessive valuation of Southern Railway's property. On August 31, 1921, the Commissioner of Revenue advised affiant that the apportionment of the assessment to Southern Railway Company in North Carolina amounted to $96,306,357.00. The Commissioner of Revenue has not advised affiant of what part of the above total is the physical or tangible property and what part the franchise, but affiant was advised by the
105 tax officer of another railroad in North Carolina that the Tax Commission had in response to an inquiry from him advised him that the Southern's tangible assessment for 1920 was $78,778,169.00 and intangible, $17,528,188.00.

That in those states in which affiant appears before the State Tax Boards in which the capitalization of net income plan is used to ascertain the value of the property, the percentage figures used by assessing boards in recent years have been as follows:

Georgia	8 %
Alabama	8 %
Mississippi	8 %
Louisiana	8 %
Tennessee	10 %
Kentucky	7 %
Ohio	8½%
Indiana	8 %

Affiant says that the total taxes paid by Southern Railway Company in the State of North Carolina for state, county, and municipal purposes for 1920 were $874,888.73, and if the present assessment remains, then, due to increased county rates, he estimates the actual tax to be paid will exceed one million dollars.

Affiant further says that in several of the states traversed by Southern Railway ad valorem taxes are paid upon the full value of the property, tangible and intangible, but in no one of said states
106 is a franchise or privilege tax paid based on the valuation upon which ad valorem taxes are paid. That the method used for ascertainment of the value of franchise or intangible property is to deduct the assessed value of the tangible property from the amount determined to be the total value of the property within the state and the remainder is the intangible value.

That under date of September 22, 1921, Honorable Baxter Durham, State Auditor, certified to Southern Railway Company the

franchise or privilege tax assessed under the provisions of Section 82 (6½) of the Revenue Laws, Chapter 34, North Carolina Public Laws of 1921, in the aggregate amount of $96,306.35.

Affiant says it is true, as stated in the answer, that plaintiff's mileage in North Carolina of first Main Line is 1,093.02; of Second Main Line, 175.74; and of Side and Yard Tracks, 373.04; and of all Tracks, 1,641.80. Affiant also says that in all states First Main Line operated is 6,971.08; Second Main Line, 726.04; Side and Yard Tracks, 2,307.49; and of all Tracks, 10,004.61. That if All Track Miles are to be used as a proper basis for distribution, and Atlantic Coast Line Trackage in North Caroline (121.46) also is to be considered, then the percentage applicable to North Carolina would be 17.62%. Affiant says it is also true, as stated in the answer, that neither the mileage of 1,093.02, First Main, nor of 1,641.80, All Tracks, includes independent lines in North Carolina, con-
107 trolled by ownership of stock, and that the North Carolina mileage of said railroads is First Main, 357.43; Second Main, none; Side and Yard Tracks, 65.19; Total All Tracks, 422.62, addition of which would make total mileage in North Carolina of railroad owned, operated, leased and controlled of First Main, 1,571.91; of Second Main, 175.74; of Side and Yard Tracks, 438.23; and of All Tracks, 2,185.88, (which figures include Atlantic Coast Line Trackage Rights in North Carolina over 121.46 miles). Affiant says if railroads in North Carolina, controlled by ownership of stock, are to be considered, then it is also proper to include and consider the mileage of railroads so controlled in all other states, which are as follows: First Main, 3,084.67; Second Main, 257.22; Side and Yard Tracks, 1,137.12; All Tracks, 4,479.01, and that the comparative showing thereof as to controlled lines only would be:

	1st main.	2nd main.	Side & yard.	All tracks.
Other States ...	3,084.67	257.22	1,137.12	4,479.01
N. Carolina	357.43	.....	65.19	422.62
Total ...	3,442.10	257.22	1,202.31	4,901.63
N. C. Proportion	10.38%	0%	5.42%	8.62%

Affiant further says that if the mileages of plaintiff in North Carolina and in other states, and of plaintiff's controlled lines in North Carolina and in other states should be considered and all consolidated the comparative showing thereof would be as follows:

	1st main.	2nd main.	Side & yard.	All tracks.
All States	10,413.18	983.26	3,509.80	14,906.24
N. Carolina ..	1,571.91	175.74	438.23	2,185.88
N. C. Proportion	15.10%	17.87%	12.49%	14.66%

108 Affiant further says that these comparative showings absolutely refute the statement in the answer that the use of plaintiff's First Main Track in North Carolina (1,093 miles) for allocating values to that state is unfair. Affiant says it is the general custom in other states, where second, side and yard tracks are not separately assessed, to use first main line mileage as a basis for allocating values. And affiant says the comparative statements before set out are only mileage figures whereas, if bases other than mileage were used, the favor shown North Carolina by exclusion of controlled lines would be more apparent.

Affiant says that the action of the Tax Commission in 1920 did not indicate that any consideration whatever was given to character of plaintiff's roadbed, fixed equipment, miles of double track, or any other factor except plaintiff's gross and net earnings allocated to North Carolina; that affiant offered proof to said Tax Commission in 1920 and to the Commissioner of Revenue in 1921 that plaintiff's operating expenses in North Carolina were not and could not be kept with mathematical accuracy, and were understated. But that notwithstanding said evidence and without regard for other factors set out in the answer the Tax Commission arrived at a tentative valuation in North Carolina by capitalizing at 7% (without deducting taxes paid in North Carolina) average net earnings of four years, 1919-1916, of $7,261,105.59, or a tentative valuation of $103,730,-071.00. And that said Commission arrived at its final valu-
109 ation by capitalizing at 6% average net earnings of five years, 1919-1915, of $6,117,624.75, or a final valuation of $101,960,-413.00 as before set out herein.

Affiant says that not only would capitalization of net earnings in all states not result in the exportation of tax values from North Carolina but that method would result in the importation of tax values to North Carolina unless due consideration were given to the fact that plaintiff owns and operates large and costly terminals and yards at such points as Alexandria, Va., Norfolk, Va., Charleston, S. C., Atlanta, Ga., Knoxville, Chattanooga and Memphis, Tenn., Birmingham, Ala., and E. St. Louis, Ill.

Affiant says plaintiff owns no tracks in Florida, as referred to in the answer, but operates into Jacksonville over Atlantic Coast Line tracks and pays taxes in that state only upon assessment on rolling stock of about $70,000.00.

Affiant says that the statement in the answer, in the last paragraph on page 18, that real estate was raised by revaluation in 1920 three times and railroad property twice their former assessments is substantially correct.

That on Aug. 10, 1920, the State Tax Commission made its report on revaluation to His Excellency T. W. Bickett, Governor of North Carolina, in which on page 5 appears the following:

110 "Valuation of Railroads.

One frequent criticism has been that the valuation of railroad properties could not be increased, it being understood that they were as-

sessed at full value before. Our report shows that railroad properties have been increased from $125,417,618 to $250,537,158, or more than doubled. Under the new Interstate Commerce Act the Interstate Commerce Commission is required to make rates that will yield an average return of not less than five and one half per cent upon the railroad lines as a whole, and to find the fair value of these properties as the basis for making the new rates. That Commission has not yet determined the basis on which the value of the railroad lines will be finally fixed. It will take several years to complete the physical valuation of all of these properties. Pending this final valuation the railroad lines have submitted to the Interstate Commerce Commission what is known as their investment accounts and have asked that this basis of value be used for determining the scales of rates and amount of return they are entitled to earn on their properties. It seems clear to us that the time has come when the value upon which a railroad or public utility is permitted to earn a return in the value upon which it should pay taxes to this State. In either case the purpose is to find the fair value of the property. So that generally our valuation of the railroad lines in this State is based upon a mileage proportion of their investment account, which they have asked the Interstate Commerce Commission to adopt as the basis for
111 making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines, based upon the volume of business in this State greater than the average volume of traffic on their lines as a whole. * * * The new assessment of railroads does not represent as great an increase as the average increase of other property, for the reason that they were assessed relatively higher than other property before, but we anticipate that it will meet the fair demands of public opinion when it is known that they are assessed like other property at their full value, and upon a valuation quite as high as that upon which they are asking to be permitted to earn a return."

Said Commission also reported as to "Real Estate Values" on page 4 of said report as follows:

"So that values as of May 1, 1919, became relatively conservative values, and we know by numerous tests that generally valuations have been conservatively made as of that date.

The increase in real estate values is large, but when subjected to any reasonable test they are shown to be conservative. In this connection it is interesting to note the increase in the total value of farm products produced in this State since 1915, when real estate was last valued:

Total value farm products, 1915	$197,185,000
Total value farm products, 1919	683,168,000."

112 Said Commission later on Dec. 31, 1920, made another report to the Governor which among other things and under "Real Estate Values," page VII, was as follows:

"They were made with reference to actual value on May 1, 1919, and under instructions to use such values with reference to that date as were deemed to be stable. The peak of speculative values in lands was reached in the fall of 1919, after the tobacco and cotton markets for that season developed unprecedently high prices for these products, and continued into the first half of 1920. The United States Department of Agriculture makes an annual appraisal of the average value of farm lands in all states. Their estimate of 1919 average value for this State was $47.00 per acre; for 1920, $75.00 per acre. The revaluation average was $38.94, or $8.00 per acre less than the 1919 average. This demonstrates that the revaluation values did not approximate the peak of speculative values. We should be equally cautious to avoid the other extreme of basing values for the future upon a congestion that has temporarily almost destroyed the market for real property."

Affiant further says it is not true, as stated in paragraph 2 on page 24 of the answer, that the Interstate Commerce Commission has fixed rates for plaintiff upon a basis which shows for plaintiff property values in North Carolina of $111,308,323.00. Affiant also
113 says that in the action of the Interstate Commerce Commission referred to no property value of any interstate railroad was allocated to any state, nor has it even appeared that any certain value was assigned to any one railroad but that a lump sum valuation was arrived at for all railroads.

Affiant is so informed and believes it to be true that the records in the office of the North Carolina Commissioner of Revenue show that the Interstate Commerce Commission has found the reproduction cost, less depreciation, of the entire property in Virginia and North Carolina of Norfolk Southern Railroad to be $26,028,366. That the total mileage of Norfolk Southern is 900.543, of which 790.264 miles, or 87.754%, are in North Carolina. That the assessment fixed in 1921 for Norfolk Southern by the Commissioner of Revenue is $22,840,932, or 87.754% of the Interstate Commerce Commission valuation of $26,028,366 before set out.

Affiant is informed and believes it to be true that the records in the office of the North Carolina Corporation Commission show that the Interstate Commerce Commission has found the reproduction cost, less depreciation, of Winston-Salem Southbound Railway (all in North Carolina) to be $4,753,006 and the value of its land to be $378,088, an aggregate of $5,131,094. That the valuation of said railway by the Commissioner of Revenue in 1921 is fixed
114 at $4,792,120, or $238,974 less than the Interstate Commerce Commission valuation before set out.

(Signed) MURRAY R. HUBBARD.

Subscribed and sworn to before me this 19th day of December, 1921.

(Signed) J. W. SMITH,
Notary Public, Fulton County, Ga.,
Notary Public, State at Large, Georgia.

My Commission Expires Oct. 5, 1923.

115 *Affidavit of A. H. Plant in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

DISTRICT OF COLUMBIA,
City of Washington:

Personally appeared before me, a Notary Public in and for the District of Columbia, City of Washington, A. H. Plant, a resident of the aforesaid District and City, who, upon being duly sworn, deposes and says that:

(1) He now is and since March 1, 1920, has been assistant to President of Southern Railway Company. From January 1, 1898, to June, 1918, he was the executive accounting officer of Southern Railway Company. From June, 1918, to February 29, 1920, he was Federal Auditor for the United States Railroad Administration and as such directed the accounting for operations of Southern Railway Company's properties which, during that period, were operated by the United States Railroad Administration.

(2) As such executive accounting officer of Southern Railway Company, he formulated and prescribed the accounting methods of the said Railway Company and directed and supervised its accounts in accordance with such methods as were formulated and prescribed by him.

116 (3) Briefly stated, the methods prescribed by him for apportioning results of operations to such individual States were as follows:

(*a*) Revenues:

One hundred per cent of freight and passenger revenues accruing on traffic having both origin and destination within a State (known as intrastate traffic) and one hundred per cent of all miscellaneous revenues earned within a State, such as switching, demurrage, car service, storage and other similar items, are allocated to the State in which they are earned.

Revenues from freight and passenger traffic, having either origin or destination within one State (known as interstate traffic), and revenues from freight and passenger traffic which have origin or destination within one State, but which pass in whole or in part through such State, also known as interstate traffic, but more spe-

cifically classified herein as trans-state traffic, are allocated to the States within which such traffic moves on basis of miles traveled by such traffic.

No deductions, adjustments or allowances are made in such allocations for assembling, handling, loading, unloading and other terminal costs incident to the handling of trans-state traffic.

(*b*) One hundred per cent of the maintenance and trans-
117 portation costs incurred within the borders of an individual State are allocated to such State. No additions to or adjustments of such costs so allocated to an individual State are made to equalize or adjust assembling, handling, loading, unloading and other terminal costs incurred in receiving and discharging trans-state traffic.

(4) Deponent states that he realized some years ago and now realizes that the results or the net revenue produced for the State of North Carolina under the accounting formulæ for allocating revenues and operating costs to States above described, were and now are erroneous and inequitable; that revenues allocated to each State, as revenues are allocated by Southern Railway Company's system of accounting, should be charged with appropriate proportions of all assembling, terminal and handling costs incurred without the State on trans-state traffic moved within a State.

(5) Deponent further states that realizing the existence of such errors and inequalities in the apportionment of revenues and operating costs to individual States, and also realizing that to correct such inequalities it would be necessary for the Railroad Commissions of each State throughout the country to mutually agree upon a uniform method of apportionment, he brought the matter to the attention of the several State Commissions through a representative of the In-
terstate Commerce Commission, with a view to the promulga-
118 tion and adoption of a uniform plan of apportionment which would correct the inequalities then existing and which now exist in such apportionments.

Such inequalities and errors were recognized by representatives of both the Federal and State Commissions. The subject was thoroughly discussed and digested at various meetings of committees representing the three interests, i. e., the railroads, the State Commissions and the Federal Commission, the result of all of which was that no relief was given and no change has been made in the method of keeping such accounts.

(6) Deponent further states that in an analysis of operations of Southern Railway Company within the State of North Carolina, it was found by him that of the total traffic handled within the State during a given period, forty-three per cent of it originated without said State and had destinations beyond said State, and that while revenues on such trans-state traffic were apportioned to the State of North Carolina on a mileage basis without deductions or adjustments for terminal costs, such revenues so allocated to said State were not

charged with any part of the costs incurred in other States in assembling, handling, loading or unloading such traffic, or for costs incurred in maintaining the facilities in and by which such traffic was handled; and that by reason of the application of the accounting methods employed in the allocation of operating results to States, the operating costs allotted and reported to the State of North
119 Carolina are understated to the extent of said State's just and proper proportion of such terminal costs on at least forty-three per cent of the traffic transported within such State by Southern Railway Company.

(7) Deponent further states that it is not the practice of Southern Railway Company to make interdivisional charges for costs incurred by individual operating divisions in transporting company material for other operating divisions. The Southern Railway Company uses no fuel coal mined within the State of North Carolina. The coal consumed by it in said State is obtained in the Alabama, Tennessee and Virginia coal fields. No part of the costs to assemble it and to transport it to the North Carolina State Line is charged against the revenues allocated to the State of North Carolina, but such costs are allocated to the States in which the service is performed without corresponding revenues for such service. As a result, the coal carrying lines show either high operating cost ratios or costs in excess of revenues earned. As illustrations:

The line Birmingham to Atlanta, over which large quantities of coal are transported for Company use in Georgia, South and North Carolina, shows an operating ratio of 103.67 per cent for the year 1920. The line St. Charles to Bulls Gap, Tenn., another coal carrying line, shows an operating ratio of 114.30 per cent for the same period. The line from the Tennessee fields into Knoxville shows an operating ratio of 113.93 per cent for 1920. Each of these
120 three lines transport coal for use by the Company in operating its trains within the State of North Carolina and no part of the assembling, maintenance or transportation costs incident to the movement of such coal from the mines up to the North Carolina border line is charged against the revenues allocated to said State. The three lines mentioned are economically managed and operated. If they had received revenue credits for services performed for the North Carolina lines and for lines in other States, for which they transported locomotive and other operating coal, their operating cost ratios would have been substantially less and the costs thus lessened would properly be charged against the revenues allocated to the several States for which the service was performed. Therefore, the operating costs allocated to the State of North Carolina are understated to the extent of costs incident to the transportation of fuel coal used within that State from the mines to the State border.

(8) Deponent further states that those data reported in Southern Railway Company's quarterly reports to the Railroad Commission of the State of North Carolina, designated as "operating expenses" for another and additional reason do not truly or accurately reflect

the operating costs chargeable to revenues allocated to said State, such other and additional reason being:

The operating costs allocated to the State of North Carolina
121 and reported by Southern Railway Company include nothing for hire of equipment or joint facility rents, and to the extent of such accruals within said State, the operating results reflected by the said reports are either overstated or understated, as the case may be. It has been held by the Congress in the Transportation Act that credits or debits arising from such sources should be reckoned with in determining net operating income.

(9) Deponent further states that, based on his intimate knowledge of the operations of Southern Railway Company, as a whole and in the several States in which the Company transports traffic, the costs to earn a dollar of revenue within the State of North Carolina, if such revenues were charged with all proper costs incurred by the Company, would not be less than the costs to earn a dollar on the entire railway.

(10) Deponent further states that the five hundred and thirty-six million, to which defendants refer and of which he took a gross earnings proportion to arrive at a value in North Carolina of $111,308,323.00, includes investment in road and equipment, improvements on leased railway property, materials and supplies, and Government allocated equipment. It is proper to first deduct from the total the materials and supplies, because the materials and supplies which were on hand at the time the statements were rendered in July, 1920, were not correct as of May 1, 1921, and if it
122 is proper to include materials and supplies, the amount thereof on hand May 1, 1921, was very much less than in July, 1920. Furthermore, there was no allocation by the Railway Company of the total of its investment account to North Carolina or any other State. In addition to this, while the amount found by the Interstate Commerce Commission to be the value for rate making purposes of all the carriers in what was known as the Southern Group was 91.1 per cent of the total claimed by the Group, affiant avers, on information and belief, that it is not known to defendants how the 91.1 per cent was arrived at, and it may be that the Commission did not allow 91.1 per cent of the Southern's investment account and allowed more than 91.1 per cent of some other road's investment account in the Southern Group. In other words, the 91.1 per cent was a general average for the Southern Region and did not apply to any particular carrier in so far as the affiant is advised and believes. Affiant states that if it be considered proper to take the book investment, an illustration of the facts as applied to one line in the State of North Carolina will show the fallacy of so doing. The investment account of the North Carolina Railroad, as reported to the Interstate Commerce Commission was $4,975,628.00, whereas it is well known that said sum does not represent by half, the true value of said property.

(11) Deponent further states that it is a fact that the Commission, in its report on the values under Section 15(*a*) of the Interstate Act, used the language set forth in the answer at the top
123 of page 16, but the deduction therefrom, "The plaintiff contended that the actual value of property in North Carolina was in excess of one hundred and eleven million," is that of defendants and is not a fact. Furthermore, since the hearing in the case referred to, Ex Parte 74, was had, the Southern Railway has received from the Interstate Commerce Commission, a partial report on its valuation under Section 19(*a*) of the Interstate Act, and it is affiant's understanding that if such investigation under the valuation section of the Interstate Act had been complete, it would have been availed of by the Interstate Commission in making its finding on the valuation under Section 15(*a*), and inasmuch as the tentative value as promulgated by the Interstate Commission of affiant's road in the State of North Carolina is now as near completed as is set forth in complainant's bill on page 25, it does not seem proper to affiant, from an accounting standpoint, to use the general finding of the Commission for all roads in the Southern Group, rendered July 29, 1920.

(12) Deponent further states that the test period covered the three years ended June 30, 1917. The year ended June 30, 1915, was below normal. The year ended June 30, 1916, was normal. The year ended June 30, 1917, was above normal, and the average for the three years produced a normal return.

(13) Deponent further states that he has had prepared
124 under his supervision for the Interstate Commerce Commission, full statements and diagrams disclosing the results of the traffic conditions of the Southern Railway for the years 1920 and 1921, in connection with the advances heretofore allowed by the Interstate Commerce Commission in freight rates of 25 per cent and passenger rates of 20 per cent. The facts disclosed by affiant's investigation are that the actual traffic transported produced an increase in freight rates of only 20.53 per cent and that that amounted to an increase in gross revenue of only 1.99 per cent due to the falling off in the tonnage and due to the falling off in the higher classes of freight which paid the greater amount of revenue. For instance, the first group, which covered the farm products, fell off 28.67 per cent and the second group, which included tobacco, fell off 25.26 per cent, whereas the third and fourth groups fell off only 9.98 per cent and 16.05 per cent respectively, as compared with the average decline of 18.33 per cent, whereas the decline in the groups covering the major portion of farm products was 28.67 per cent.

Affiant is, therefore, able to state as a fact that the Southern Railway Company suffered very heavily from the decline in its tonnage and that the increase in freight rates did not offset the decline and did not approximately offset the increase in what might be considered normal expenses.

(Signed) A. H. PLANT.

Subscribed and sworn to before me this 19th day of December, 1921.

[SEAL.] (Signed) HARRY K. PIMPER,
Notary Public.

Affidavit of J. B. Duke in Support of Plaintiff's Application for Interlocutory Injunction.

Filed Dec. 24, 1921.

DISTRICT OF COLUMBIA,
City of Washington:

J. B. Duke, being first duly sworn, says:

That he has been connected with the Accounting Department of the Southern Railway Company since March, 1900, and is at this time the General Auditor of the Company, in charge of its books and accounts, which are under his immediate supervision and jurisdiction.

That the main lines of Southern Railway Company in the State of North Carolina constitute funnels through which pass a large volume of traffic originating and terminating without the State. The revenue allocated to North Carolina on this traffic is the mileage proportion of the revenue accruing to Southern Railway Company arrived at on basis of miles hauled in North Carolina compared to the total miles hauled by Southern Railway Company.

That in the allocation of expenses to the State there is charged to North Carolina as the cost for handling this traffic only the road haulage costs incurred within the State.

That this method does not charge to North Carolina the total expenses which should be charged against the revenue allocated on a mileage basis to the State, and, as a consequence, the net income in North Carolina has been overstated.

That Southern Railway Company is required by North Carolina to report the results of operation within the State and endeavored to keep its accounts and records so as to comply with this requirement. It has been recognized, however, that there are great difficulties involved in keeping the accounts in a manner that would reflect with accuracy the revenues and expenses or net income in any individual State.

That these difficulties are generally recognized and several years ago efforts were made to devise methods by which there could be equitably apportioned to each State a proper part of assembling, terminal or haulage costs incident to interstate and trans-state traffic. The effort to do this was spread over a period of years and a careful study of the subject was made co-operatively by representatives of the various State Commissions and representatives of the railways through a committee appointed for that purpose. The conclusion reached by these joint representatives was:

"Whereas, The Joint Committee composed of the Standing Committee on Uniform Railway Statistics of the Na-

tional Association of State Railroad Commissioners and a Sub-committee of the Committee on Corporate, Fiscal and General Accounts of the Association of American Railway Accounting Officers, have on several occasions in joint conference discussed the formulation of rules for the assignment of expenses, and revenues by State lines, and

"Whereas, As a result of these discussions, the Joint Committee is unanimously of opinion, in view of the great variety of practices on the part of carriers and of local conditions, it is not possible at this time to arrive at a satisfactory set of rules for the purpose named:

"Be It Resolved, By the Joint Committee, that it is not feasible at this time to attempt the formulation of such rules and that each association for whom the respective committees stand, be requested to report this conclusion, accompanying the respective reports with such explanatory statements as will make clear the basis of the conclusion reached but at the same time expressing their willingness to take up the question at some future time if so requested by their respective associations."

It will be seen from the above that no feasible plan for surmounting the difficulties could be devised.

129 That Southern Railway Company, realizing that the reports do not reflect the actual results of operation by States situated as was North Carolina, has been confronted with the necessity of making the reports under State requirements and has made the reports upon the best basis that could be devised without exceedingly heavy accounting cost, and always realizing that the figures given to North Carolina did not correctly represent the net income for a State situated as is North Carolina, and it was on this account that the Tax Commissioner of Southern Railway Company was advised to make it clear to the tax authorities of North Carolina that the net income so stated was not the true net income for North Carolina, and affiant is advised and hence states that Southern Railway's tax officer did make this clear to the Commissioner of Revenue of North Carolina.

That in a test made by Southern Railway Company several years ago it was determined that of the volume of freight traffic handled in the State of North Carolina 43 per cent represented traffic having both origin and destination without the State, and if there has been any change it is believed that at this time the percentage would be greater. No test has been made as to the volume of passenger traffic passing through the State, but it must be admitted that there is a large volume of such traffic.

130 That operating expenses reported to the State of North Carolina do not include any of the initial or destination terminal costs on the above referred to traffic and as the State has been credited with a mileage prorate of revenue accruing on the traffic, the expenses are obviously understated with a consequent overstatement of the net income within that State.

That the Revenue Commissioner, affiant is advised, used the returns for the five-year period 1915-19 and found the annual average net income to be $6,117,625.00. This makes a ratio of 71.20, which

means that it cost 71.20c. to earn a dollar. The System ratio for that period was 77.50, and if that ratio had been applied to the gross revenue which produced the net figure of $6,117,625.00, the result would have been an annual average net income of $4,779,641.00 instead of $6,117,625.00, and if the $4,779,641.00 be capitalized at 6 per cent, the capitalization would have been $79,660,683.00.

That if the Commissioner of Revenue had taken the five years 1916-20, the annual average net income reported to North Carolina would have been $6,385,392.00, and that gives an operating ratio in North Carolina under that erroneous system of arriving at the net, of 74.22. If the gross revenue for the period 1916-20, which produced the above net of $6,385,392.00, had had applied to it the System ratio for the said five-year period of 81.48, the average net for that five years would have been $4,586,793.00, which figure, capi-
131 talized at 6 per cent, would give $76,446,651.00.

That the actual results of operation for the six months ended June 30, 1921, disclose that the Southern Railway Company for said six months lacked, after paying operating expenses, taxes, hire of equipment, and rents for joint facilities, the sum of approximately $4,500,000.00 of earning sufficient money to pay interest on its funded debt and other fixed charges, exclusive of any dividend. It is true that the succeeding four months, namely, to November 1, 1921, have shown an increase and that the sum which the earnings of the Company up to November 1, 1921, lacked for that ten months of being sufficient to pay the interest on its funded indebtedness and other fixed charges, exclusive of dividends, was approximately $1,-600,000.00. It is stated, however, that if the earnings are to be taken as a criterion of the present value of the property, since the property was to be valued as of May 1, 1921, the period subsequent to June 30, 1921, should not be included, but the earnings during that period would be evidence of value when it comes to consider the value on May 1, 1922.

That the station and yard expenses on the Southern Railway are kept separately from the other expenses, and the records show that for the year ended December 31, 1920, the average cost per ton of station and yard expenses for the Southern Railway as a whole
132 was 42.05c., as compared to a cost for similar classes of expense per ton in North Carolina of 25.87c. per ton. This shows that the terminal costs in the State of North Carolina are not as great as those in other States. This is due to the fact that the larger terminals are in other States and heavier terminal expenses are charged to other States, in accordance with the method of keeping the accounts heretofore explained, and is also due to the fact that North Carolina is so located that it acts as a funnel for the Southern Railway's traffic, viz.: traffic moving north and south; traffic from the southeast going northeast; traffic from the southwest going to the northeast; and traffic from the northwest and west which moves east through the State of North Carolina. This may be visualized by reference to the map hereto attached, marked Exhibit "A." On all of this traffic the State of North Carolina receives its full mileage pro-

rate of the revenue, but is not charged with any of the terminal expense, so that when you figure up the terminal expense in North Carolina on a per ton basis, it is shown, as above stated, that it costs 25.87c. per ton as against 42.05c. per ton for the Company as a whole.

That if the operating expenses apportioned to the State of North Carolina included an average System charge for station and yard expenses per ton of freight handled in that State as a charge against the mileage proportion of revenue apportioned to the State, the
133 operating expense for the year ended December 31, 1920, would have been increased and the net operating income would have been decreased by $2,456,432.07.

That the results of operation for the year ended December 31, 1920, on the line Asheville to Murphy, N. C., were—

Railway Operating Revenue	$1,066,883.75
Railway Operating Expenses	1,382,163.37
Ratio Operating Expenses to Op. Rev.	129.55

that is, it took $1.29 to earn $1.00, whereas the same figures for the line Asheville to Salisbury, N. C., were—

Railway Operating Revenue	$5,749,165.96
Railway Operating Expenses	4,448,897.48
Ratio Operating Expenses to Op. Rev.	77.55

that is, the purely operating expenses consumed 77.55c. of every dollar.

The above figures prove that the mountain lines cost more to operate and do not pay as great a return as do the low grade lines; and further prove that the volume of the interstate tonnage coming from east and from the west and southwest and passing over the line Asheville to Salisbury and on which no terminal cost is allocated to North Carolina have cut down the operating cost below what it prop-
134 erly should be if a proportion of the terminal charge was placed against that line.

That while it is true that the aggregate of the freight which originates at and is shipped from Winston-Salem is at times greater than that shipped from any other point on the line of Southern Railway, it is also true that there is included in such shipments, not only the freight which originates at the City of Winston-Salem, but also the freight which is forwarded from Winston-Salem, received by Southern from its connections.

If you deal only with the tonnage of freight which originates at Winston-Salem and is forwarded over Southern Railway lines, Winston-Salem is not, by any means, the largest freight shipping point on the line of Southern Railway.

For instance, for the month of September, 1921, there originated at Richmond, Va., and were forwarded over Southern lines, 19,587 tons of freight, whereas the tonnage originated at Winston-Salem and forwarded over Southern lines was only 11,380 tons, the tonnage shipped from Richmond proper being 72 per cent greater than that originated at and shipped from Wintson-Salem for that month.

It is true that if there be added to the freight which originates at Winston-Salem the freight which is delivered to Southern
135 Railway at Winston-Salem by connections and by it forwarded, which for the month of September, 1921, was 35,314 tons, or more than three times greater than that which originated at Winston-Salem proper, Winston-Salem tonnage would probably be greater than that shipped from any other individual station.

The relatively large proportion of freight forwarded from Winston-Salem over Southern Railway lines coming from connections but which does not originate at Winston-Salem consists largely of interstate coal handled in carload lots and in large volume and in cuts of cars, requiring relatively little terminal handling, which makes the terminal expense at Winston-Salem relatively very small.

The terminal expenses at Winston-Salem are not heavy due to the fact that a large part of the freight originating at Winston-Salem is manufactured tobacco and this traffic is, generally speaking, loaded by the shipper and handled at a minimum expense to the Railway Company.

It is a fact that the total freight revenue, including advanced charges, if any, is very heavy at Winston-Salem, but, as stated, it consists largely of freight on tobacco, which moves for great
136 distances and many other lines participate in the rate. It is a further fact that the transportation cost under the item of loss and damage freight claims are heavier on manufactured tobacco than on any other article of freight. The freight received at Winston-Salem is not by any means the largest of any station on the Southern Railway. Charleston, S. C., Knoxville, Tenn., Atlanta, Ga., Birmingham, Ala., and many other stations receive much more freight.

That the system followed by Southern Railway Company in the apportionment of revenue among States has not heretofore been changed because it has not in any one State heretofore worked to the disadvantage of the carrier so as to affect it financially and because a change in the method of approximating revenues and expenses among the States with a view of making these apportionments on a more accurate basis would have proved to be very expensive.

That as an accounting officer of Southern Railway Company, having had immediate jurisdiction over and to do with its accounts during the past twenty-one years, he can see no reason from an operating standpoint why the cost to earn a dollar of revenue within the State of North Carolina should be less than the average cost to earn a dollar of revenue on the entire System.

That it is manifestly apparent that the low operating ratio
137 produced within the State of North Carolina, as reflected by its reports to the State and through its method of accounting, is due to the fact that the expenses assigned to the State include nothing whatever for assembly and terminal costs on trans-state traffic which has both origin and destination without the borders of the State.

That the Southern Railway Company owns the capital stock of the Atlantic & Yadkin Railway Company. The Atlantic & Yadkin

Railway Company is separately operated, has a separate board of directors, consisting of six members, three of whom are not in any way connected with the Southern Railway Company, namely, C. H. Ireland, of Greensboro, N. C., A. E. Smith, of Mt. Airy, N. C., and J. C. Watkins, of Greensboro, N. C. Its books and accounts are kept separately and its receipts and expenditures are kept distinct and separate from those of the Southern Railway Company. It makes a separate report to the Interstate Commerce Commission and is from an accounting, treasury, corporate and operating standpoint entirely distinct from Southern Railway Company.

(Signed) J. B. DUKE.

Subscribed and sworn to before me this 19th day of December, 1921.

[SEAL.] (Signed) HARRY K. PIMPER,
Notary Public.

138 *Affidavit of C. E. A. McCarthy in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

STATE OF NEW YORK,
City and County of New York:

C. E. A. McCarthy, being first duly sworn, says:

That he resides in the City of New York and has been connected with the Secretary's office of Southern Railway Company for nearly twenty-four years and has been Secretary for the past year; that by virtue of his office he is familiar with the market price of the bonds and other funded indebtedness of Southern Railway Company and of the stock of Southern Railway Company; that the stock books and bond registry books are kept in his office or under his jurisdiction, and the transfers of certificates of stock and the registration of bonds are made in his office, or under his jurisdiction; that the list of bonds, other funded debt, and stocks of Southern Railway Company shown on the statements hereto attached*/ and made part of

*NOTE.—The statements attached to Mr. McCarthy's affidavit are not printed, because too voluminous and the expense of printing is too great. The original statements are filed with the original affidavit in this cause in Court. The statements show for the five year period 1917 to 1921, inclusive, the name of the stock or bond or other obligation, the total par value thereof, the average market price for the year, and the total market value for the year, with the closing market price bid and asked as of April 30th, each year. The summary referred to in the above affidavit is the summary of the total market value for each of the five years as follows:

1917	$329,646,630.76
1918	318,819,008.01
1919	308,668,562.64
1920	295,391,397.62
1921	287,049,221.37
Total	$1,539,574,820.40
Average	$307,914,964.

this affidavit is true and correct, and that the prices shown as of the dates given are the prices taken by him from the publication of such information made by the Commercial and Financial Chronicle, a recognized commercial and financial journal, and that the
139 recapitulation shown is true and correct as based upon the information set forth.

The average of the total market value for the five year period 1917 to 1921, inclusive, is, as based upon and shown by the attached statements, the sum of $307,914,964.

(Signed) C. E. A. McCARTHY.

Subscribed and sworn to before me this 16th day of December, 1921.

[SEAL.] (Signed) JENNIE C. DALE,
Notary Public.

140 *Affidavit of T. H. Gatlin in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

T. H. Gatlin, being first duly sworn, says:

That he has been in the engineering service of railway companies for the past thirty years and is at the present time Chief Engineer of Construction of Southern Railway Company and its affiliated lines.

That he has read the answer of A. D. Watts, et al., in the suit of Southern Railway Company vs. A. D. Watts, et al., and states the following facts in answer to and bearing upon certain allegations in said answer, namely:

That the cost per mile of the mileage between points shown in mountainous sections of North Carolina for 444 miles averages approximately $51,000.00 per mile:

Val. sec.	From—	To—	Miles main track.	Value I. C. C. new.	Aver. cost per mile new.	Max. grade.	Max. curv.
53.	Murphy Jct., N. C.	Murphy, N. C.	122.3	$4,430,398	$36,000	N. 3.9%, S. 4.1%	17 deg.
48.	Biltmore, N. C.	N. C.-S. C. State Line	42.5	2,261,577	53,000	N. 4.7%, S. 2.3%	11 deg.
49.	Hendersonville	Lake Toxaway	42.0	901,310	22,000	N. 2.2%, S. 3.0%	11 deg.
43.	S. C.-N. C. State Line.	Marion, N. C.	64.2	1,766,494	28,000	N. 1.8%, S. 1.6%	12 deg.
33.	Salisbury	N. C.-Tenn. State Line	173.9	13,348,391	77,000	E. 1.8%, W. 3.2%	12 deg.
	Total		444.3	22,708,170	51,000		

141 That the cost figures shown in above statement were compiled by the Bureau of Valuation in its tentative report, except right of way, which is the value compiled by the Land Department of the Southern Railway. The maximum grades and curvature are as reported by the Southern Railway Company to the Interstate Commerce Commission, Bureau of Valuation.

That the C. C. & O. Railroad was constructed in 1907, an entirely new and modern railroad with a maximum grade of 1.4% compensated, and maximum curvature of 6 deg., which largely accounts for heavy construction cost per mile. Whereas, the Southern Railway Company lines in this section of North Carolina have grades as high as 4.7% and curvatures as high as 17 deg., with a heavy operating cost in proportion to curvature and grades. This largely explains the small cost of construction per mile as compared with the cost per mile of construction of the C. C. & O. Railroad.

That the so-called mountain lines of the Southern above referred to have a very much heavier operating cost per year than does the C. C. & O., due to the grades and character of construction, as above set forth. The cost of operation of the 444 miles for a year exceeds the cost of operation of the same mileage in the level portions of the State by $319,906.65.

142 That the actual cost of all work performed in connection with the construction of the double track of 625 miles between Washington and Atlanta was $52,134,000.00. This total cost included the rearrangement of the first main track and a large amount of entirely new double track in a new location, which was necessary in the elimination of excessive grades and curves which existed in the original main track. In a great many cases where the location of new double track is located on original centers, summits were lowered and low places were raised. This involved a large additional expense in operation and construction during the raising and lowering of the first main track. In the construction of the new second main track through the State of North Carolina fully thirty per cent of the first main track was changed to a new location and entirely reconstructed. So that it is not correct to say that the second track cost on an average per mile of $82,884.00. You would have to take into consideration very many other features to arrive at the cost per mile of the second track. As explained, in many instances the total includes the reconstruction of the two tracks. In addition to this, the heavier and more expensive part of the double track construction which is included in the total set forth in the answer was outside of the State of North Carolina.

143 That the terminal facilities in North Carolina do not in the aggregate compare with the terminal facilities in certain other States. It is not a fact that Spencer is the largest terminal yard and repair shop of this company. The following comparative figures show the relative cost of constructing the Spencer yard and terminal with one of the larger terminals located on its

line at Inman, Ga. The gross cost of constructing these terminals *are* as follows:

Inman Yard and Terminal	$789,847.19
Spencer Yard and Terminal	367,455.99

These terminals were reconstructed and enlarged at practically the same time and are located on the same line. The Inman Terminal is nearly twice the size of the Spencer Terminal, with operating expenses in proportion.

(Signed) T. H. GATLIN.

Subscribed and sworn to before me this 22nd day of December, 1921.

(Signed) HARRY K. PIMPER,
Notary Public.

144 *Affidavit of R. E. Johnson and Others in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Gaston:

R. E. Johnson, being duly sworn, says:

That he is a citizen of Gaston County, North Carolina, and has been such for a number of years; that he is engaged in the business of selling agent and merchandise distributor and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of
145 interest paid for money and which invested capital yielded.

(Signed) R. E. JOHNSON.

Subscribed and sworn to before me, this the 5th day of October, 1921.

(Signed) EDNA J. AHMAND,
Notary Public, Gaston County, N. C.

My commission expires September 3, 1922.

Affidavit of W. C. Idol.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

W. C. Idol, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of banking, being Cashier of the Wachovia Bank & Trust Company, at High Point, and is acquainted with the rate of interest generally prevailing in the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that, so far as he is informed and
146 believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) W. C. IDOL.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

My commission expires the 23rd day of April, 1923.

Affidavit of V. A. J. Idol.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

V. A. J. Idol, being duly sworn, says:

That he is a citizen of High Point, Guilford County,
147 North Carolina, and has been such for a number of years; that he is engaged in the business of banking, being Cashier of the Commercial National Bank, at High Point, and is acquainted with the rate of interest generally prevailing in the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and ob-

tained upon capital invested in banking, merchandising, and other business was in 1920 and 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) V. A. J. IDOL.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

My commission expires the 23rd day of April, 1923.

148 *Affidavit of Frank Wineskie.*

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

Frank Wineskie, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of manufacturing of mirrors, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) FRANK WINESKIE.

149 Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of Guy E. Wells.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

Guy E. Wells, being duly sworn, says:

That he is a citizen of High Pont, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of automobiles, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

150 Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) GUY E. WELLS.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of J. E. Kirkman.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

J. E. Kirkman, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of manufacturing of furniture and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

151 Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) J. E. KIRKMAN.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of Harry Raymond.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

Harry Raymond, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North
152 Carolina, and has been such for a number of years; that he is engaged in the business of manufacture of veneers, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) HARRY RAYMOND.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

153 *Affidavit of W. H. Slave.*

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

W. H. Slave, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of hosiery manufacturer, and is acquainted with the

current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) W. H. SLAVE.

154 Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of R. T. Amos.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

R. T. Amos being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of manufacture of hosiery, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was
155 in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) R. T. AMOS.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of Wallace B. Davis.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Buncombe County:

Wallace B. Davis, being duly sworn, deposes and says:
That he is President of the Central Bank and Trust Company of Asheville, North Carolina; and has been engaged in the banking business at Asheville for more than fifteen years; that the usual and ordinary rate of interest charged on loans in this community during 1920 and the spring of 1921 was more than six per cent and that when loans were made by banks at six per — it was
156 usually with the understanding that a certain per cent of the loan be kept on deposit. Some loans were made at six per cent straight, but the general rule among persons having money to loan is that the loans are made at from seven to eight per cent, and sometimes even at a higher rate, and this has been so for several years.

(Signed) W. B. DAVIS.

Sworn to and subscribed before me this 23rd day of September, 1921.

(Signed) THOMAS S. ROLLINS,
Notary Public, Buncombe County, North Carolina.

Affidavit of S. M. Hanes.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Buncombe County:

S. M. Hanes, being duly sworn, deposes and says:
That he is Secretary of the Bankers Trust and Title Insurance Company, of Asheville, North Carolina, and that among other things his company is engaged in buying and selling real
157 estate notes. That the usual and ordinary rate of interest charged on loans in this community during 1920 and the spring of 1921, was more than six per cent; that the usual and customary rate of interest charged on loans in this community during said time was from seven to eight per cent, and some loans were even made at a higher rate of interest.

(Signed) S. M. HANES.

Sworn to and subscribed before me this 23rd day of September, 1921.

(Signed) THOMAS S. ROLLINS,
Notary Public, Buncombe County, North Carolina.

Affidavit of R. H. Edwards.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Wayne County:

R. H. Edwards, being duly sworn, says that he is President of the Farmers Loan & Trust Company of the City of Goldsboro; that he is familiar with the current rate of interest charged during 1920 and the spring of 1921 in the County of Wayne, State of North Carolina; that in the opinion of affiant, a majority of the loans made
158 during that period was 8 per cent.

(Signed) R. H. EDWARDS.

Sworn to and subscribed before me this the 20th day of September, 1921.

(Signed) RUTH MIDDLETON,
Notary Public.

My commission expires Aug. 27, 1922.

Affidavit of Geo. D. Bizzell.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Wayne County:

Geo. D. Bizzell, being duly sworn, says that he is Chairman of the County Board of Commissioners of Wayne County; that he is familiar with the current rate of interest charged during 1920 and the spring of 1921 in the County of Wayne, State of North Carolina; that in opinion of affiant, a majority of the loans made during that period was 8 per cent; that during that period the County of Wayne borrowed money in various amounts and paid as much as 8 per cent interest.

(Signed) GEO. D. BIZZELL.

159 Sworn to and subscribed before me this the 20th day of September, 1921.

(Signed) RUTH MIDDLETON,
Notary Public.

My commission expires Aug. 27, 1922.

Affidavit of Fred R. Mintz.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Wayne County:

Fred R. Mintz, being duly sworn, says that he is a member of the co-partnership, trading under the firm name of Williamson Real Estate Company of the Town of Mount Olive, County of Wayne, State

of North Carolina; that he has represented the County of Wayne in the General Assembly for two sessions and was for a number of years owner and editor of the Mount Olive Tribune, a newspaper published in Wayne County; that he is familiar with the current rate of interest charged during 1920 and the spring of 1921 in the County of Wayne, State of North Carolina that in the opinion of affiant, a majority of the loans made during that period was 8 per cent and over.

(Signed) FRED R. MINTZ.

Sworn to and sulscribed before me this the 20th day of September, 1921.

(Signed) RUTH MIDDLETON,
Notary Public.

My commission expires Aug. 27, 1922.

160 *Affidavit of Members of Tax Commission.*

Filed January 23, 1922.

In the District Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

And the Other Suits Against the Same Defendants Brought by Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Norfolk & Southern Railroad Company, Atlantic & Yadkin Railway Company.

Affidavit by the Members of the Former Tax Commission of No. Ca.

STATE OF NORTH CAROLINA,
Wake County:

W. T. Lee, George P. Pell and A. J. Maxwell make this statement under oath.

That in the years 1919 and 1920 W. T. Lee, George P. Pell and A. J. Maxwell were members of and constituted the State Tax Commission, W. T. Lee being Chairman of the State Tax Commission, and had and exercised the duties and responsibilities conferred upon them by Chapter 92 of the Public Laws of 1919 and by Chapter 84 of the Public Laws of 1919, and as the State Tax Commission exercised the powers and duties of a Board of Appraisers of all properties, located within the State of North Carolina, of all railroad companies (excepting certain incidental properties of such companies assessed by local authorities) and also had and exercised supervision of the valuation of all real property of every kind and of the listing

and valuation of all personal property of every kind in all
161 counties of the State. In the supervision of the listing and valuation of such properties by local assessing officers, under the laws hereinbefore referred to, it was the purpose to have all lands listed and valued equally at the true value of such lands and assessing officers were required to ascertain the actual sales value of lands, where there had been a recent sale, and to use the information thus obtained, as well as all other information obtainable, in finding the actual true value of such lands on the first day of May 1919, and in estimating the value of other similar lands, in cases where there had been no recent sales, and that as to industrial plants of all kinds and the tracks, structures, buildings and equipment of railroad companies—properties which had not been subject to unit sales as a whole and the value of which could not therefore be determined with relation to an actual sale of such properties—it was the purpose to require, and the State Tax Commission did in so far as it could reasonably do so, the owners of industrial plants and railroad companies, to furnish information on forms prepared by experienced persons employed by the State Tax Commission, complete detailed information, under authority of section thirty-one of Chapter 84 of the Public Laws of 1919, of the cost of reproduction of such industrial plants on the price level of May 1, 1919, and as to railroads the cost of reproduction of the properties of such companies new (on May 1, 1919, including side tracks, doubled tracks, and all properties owned by such companies in this State, less reasonable depreciation for such of its properties as had depreciated in value, and also information as to capital stock, bonds and other indebtedness, earnings, and so on.

The Southern Railway Company, the Atlantic Coast Line Railroad Company the Seaboard Air Line Railway Company and the Norfolk-Southern Railroad Company, in response to demands made upon them for specific and detailed information as to the cost of reproduction of the properties in this State of each of these companies, did file with the State Tax Commission certain sets of
162 figures, now on file with the Commissioner of Revenue, but did not pretend that such figures even approximated the cost of reproduction of the properties owned by these companies, or either of them, in this State, in the year 1919, but, on the other hand, insisted that it would not be possible for them to furnish this information at any reasonable cost or at any cost within a period of several years. The State Tax Commission, therefore, did not, have the benefit of this specific detailed information with respect to the value of the particular properties in this State of these several railroad companies which it did have with respect to, and used in, the valuation of properties of industrial enterprises within the State, and of necessity had to form its valuation of the properties of these companies without having this information and by making the best use that it could of other information furnished by these companies and information *furnished by these companies and information* on file with and in the records of the North Carolina Corporation Commission.

One of the evidences of value submitted for consideration, by each

of these companies was what is technically known as "investment accounts" of these companies, not within the State of North Carolina, but throughout the entire systems of Railroads owned by them in many states other than North Carolina; and it was insisted by them that the proportion of their total investment account which their main line mileage within the State of North Carolina bore to the total main line mileage of each of these several railway systems throughout the several states in which they operated would give a fair value of the property of such companies within the State of North Carolina, except that it was insisted that they had larger and more expensive terminal facilities outside the State of North Carolina than they had at any one point within the State of North Carolina, and that for this reason the straight mileage proportion of their investment account would be more than a fair proportion for this State.

163 The State Tax Commission was not able to agree with them that this method would fairly determine the value of their properties within the State of North Carolina, for that, first, their investment accounts represented investments made in the properties going back through a long period of years to their original organizations, and such investment having been in a large part made in years when the general price level of materials, commodities and labor was very much lower than the price level for materials, commodities and labor was on May first 1919; and for that, second, a straight mileage proportion of their lines did not, in our opinion, accurately or fairly represent the actual value of the properties of either the Southern Railway Company, the Atlantic Coast Line Railroad Company or the Seaboard Air Line Railway Company within the State of North Carolina, the lines of these companies within North Carolina having, in our opinion, a much greater value than an average based upon the mileage for their entire systems, in that they have a larger proportion of double track main line mileage in North Carolina than for their entire systems, and in that both the gross and net earnings of each of these railway lines within the State of North Carolina is much greater than the average gross and net earnings per mile for their entire systems. All of this was duly considered by the Commission in proportioning, dividing and determining the valuation of the property of the said railroads in North Carolina as provided by law.

For the year 1918, the last calendar year prior to the first day of May 1919, the excess net operating revenue per mile within the State of North Carolina of each of these railway companies in excess of the net operating revenue per mile for their entire systems, stated in per centages as shown by their reports on file with the Corporation Commission, was as follows:

164 Southern Railway Company 50.48;
Atlantic Coast Line Railroad Company 19.75;
Seaboard Air Line Railway Company 250.01.

A satisfactory estimate of value could not be made based upon the market value of the stocks and bonds of these companies on the first day of May 1919, for the reason that the limited market and the

limited number of shares and bonds sold on the market did not furnish, in our judgment, a fair index of the actual value of these properties as a whole, and more particularly did not furnish an index of the actual value of the properties of these companies located within the State of North Carolina for the reasons hereinbefore stated; nor was it considered that the actual value of these properties could be fairly determined by their earnings, until there should be a fair return to normal conditions of operating costs, flow of traffic and stabilization of transportation rates.

For the reasons hereinbefore set out the valuation finally made or determined by the State Tax Commission of the properties of each of these railway companies within the State of North Carolina as of the first day of May 1919, was not made with the sole and exclusive relation to any one element or indicia of value, but after due and proper consideration of all of them and upon the best knowledge and information obtainable by the Commission.

The members of the Commission have for years been actively engaged in the matters of valuation for rate making and taxation purposes in North Carolina and are acquainted with property values of railroads in the State and in assessing the properties of the plaintiffs the Commission gave due consideration to all factors and methods prescribed by the law governing such valuations and the values of said properties as fixed and determined by the Commission as of the first day of May 1919, were, in the opinion of affiants, fair, just and reasonable.

As to the properties of the Southern Railway Company in the State of North Carolina, a valuation of $111,308.325 was
165 made, which was in fact the proportion of the investment account of the Southern Railway Company which the gross earnings of that company within the State of North Carolina bore to the total gross earnings of the Southern Railway Company for the entire system. Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960.416, which was in fact the amount which the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis or theory of six per cent, would have produced.

In general the same method was followed in fixing the valuation of the total properties in the State of the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railroad Company, and the Norfolk and Southern Railroad Company. In each case the basic consideration was the cost of reproduction value, less depreciation, which, in the absence of correct reports of such values by the railroads as they were required by law to furnish and which were duly called for by the Commission, was arrived at as accurately as possible by a consideration of the investment account. In each case a tentative cost of reproduction value was found in this way, which, except in the case of the Norfolk and Southern, was in excess of the assessment as finally arrived at. In the case of the Norfolk and Southern this investment account, or cost of reproduction, value was the same as the final assessment and that railroad made no applica-

tion to the Commission for rehearing on that assessment and took no exception thereto. In the case of the other railroads, a consideration of capitalization of net income and of the other factors which the Tax Commission was authorized by law to consider led to the reduction of this investment account, or cost of reproduction, value to the valuation fixed as the final assessment.

After the assessments of the properties of the plaintiffs had been arrived at by the Tax Commission pursuant to the Revalua-
166 tion Act (Public Laws of 1919, Chapter 84) the Commission, as required by law, made report of its action and valuation to the General Assembly of North Carolina and thereupon, in the special session of 1920 the General Assembly, by Chap. 1, Public Laws, Extra Session 1920, specifically approved said valuations as correct and adopted them as and declared them to be the basis for taxation for the years 1920-1923 inclusive, except as such valuations should be thereafter changed according to law. And the affiants are informed and believe and so aver that the said valuations, so made by the Commission and reported to the General Assembly and approved and adopted by it, have remained and still are the basis for taxation of the said railroads in North Carolina except in so far as they have been modified or changed by the Commissioner of Revenue upon application made to him by the said railroads for review as provided by law.

As to the tentative values of the engineers of the Interstate Commerce Commission, referred to by the plaintiffs in these suits as being proper indices of the correct valuation of their total properties in North Carolina, the said tentative values were arrived at upon the basis of an inventory of the railroads' properties as of the date of June 30, 1914. The affiants state of their own knowledge that the said prices prevailing in 1914 as to material labor, and all costs of railroad construction, were abnormally low, that since that time such prices have greatly increased, and that in 1919 and in 1920 the said prices of labor, materials, and all things going into the construction of railroads were very much higher than those of 1914 upon which the said tentative figures of the Interstate Commerce Commission were based. In the opinion of the affiants the said tentative figures in no way furnish a proper index or test of the value of the properties of railroads in North Carolina in 1919 and 1920.

It was the purpose of the State Tax Commission in
166½ valuing the property of transportation companies and other companies exercising the right of eminent domain, and in the supervision of the valuation of all other property by local assessing officers, to carry out and to have carried out what the State Tax Commission understood to be the general purpose of Chapter 84 of the Public Laws of 1919, that all property of every class should be fairly and equally valued at its actual value, and in evidence that no injustice was done to the Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railroad Company and the Norfolk-Southern Railroad Company, there is attached hereto a copy of the report of the State Tax Commission to the Special Session of the General Assembly of 1920, showing, by

comparison, the valuation of 1920 compared with the former valuation of each of the several different classes of properties within the State of North Carolina and showing that the increase in valuation of all railroad property within the State of North Carolina was 99 per cent; of real property 296 per cent; and of all property of all classes within the State 194 per cent.

W. T. LEE,
A. J. MAXWELL,
GEORGE P. PELL.

Sworn to and subscribed before me this January 21, 1922.

[SEAL.] W. H. PITTMAN,
Notary Public.

My commission expires July 29, 1922.

167 *Motion of Plaintiff to Amend Bill, and Order Denying Motion.*

Filed — 28, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue, et al., Defendant.

Motion to Amend.

Comes the complainant and moves the Court for leave to amend its bill in accordance with the amendment hereto attached a copy of which has been served upon counsel for the defendants.

Dated January 24, 1922.

S. R. PRINCE,
Solicitor for Complainant.

The foregoing motion of complainant to amend its bill in this cause came on by consent of all parties to be heard by Circuit Judge Edmund Waddill and District Judges James E. Boyd and Henry G. Connor, the Court convened under Section 266 of the Judicial Code of the United States for the hearing of the complainant's application for an interlocutory injunction, and the Court, having duly considered the said motion and being of the opinion that said amendment should not be allowed.

It is ordered and decreed that complainant's motion to amend be and it is denied.

EDMUND WADDILL, JR.,
Circuit Judge.

JAS. E. BOYD,
H. G. CONNOR,
District Judges.

168 *Amendment to Bill, Adding Secs. 8½ and 14½.*

Filed January 24, 1922.

In the District Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

Southern Railway Company, by leave of Court first had and obtained, amends its bill of complaint filed herein by adding the following sections:

(8½) That the undervaluation of real and personal property in North Carolina, other than the property of railroads, including that of this plaintiff, prior to and since the enactment of the Revaluation Act and Section 28 (*a*) of the Machinery Act of 1921, has been systematic and intentional with the design to discriminate against plaintiff and other railroads and cast upon them an undue share of the burdens of taxation for the purpose of relieving such other property of its just proportion of taxation, and by this systematic and intentional undervaluation of real and personal property, the property of plaintiff has been valued higher than that of individuals and other corporations, and plaintiff avers that such discrimination is in contravention of Article 5, Section 3 of the Constitution of North Carolina and of the Fourteenth Amendment to the Constitution of the United States.

(14½) Plaintiff shows that Schedule D of the Revenue Act of 1921, known as the Income Tax, is unconstitutional and void for the following reasons:

(*a*) For that it is not a tax on income, but is in truth and in fact a tax upon operating income derived by railroad companies from interstate and intrastate commerce, and for the reason that
169 from the operating revenue arrived at under the said law there are not allowed many of the deductions required by the Standard Classification of Accounts of the Interstate Commerce Commission, which Standard Classification of Accounts was promulgated by the said Interstate Commerce Commission under the provisions

of the Interstate Commerce Act passed by Congress, and which are so regulated as to ascertain in what is the net income of railroads engaged in interstate commerce. Complainant says that among other items which are directed to be deducted by railroads in interstate commerce from operating income, in order to arrive at net income, are the following:

Rent for leased roads,
Joint facility rents
Miscellaneous rents
Separately operated properties—loss
Interest on unfunded debt
Income transferred to other companies
Miscellaneous income charges
Interest on funded debt,

and avers that in order to ascertain the net income of railroads engaged in business in interstate commerce, as plaintiff is, according to said Standard Classification of Accounts of the Interstate Commerce Commission, promulgated as aforesaid, it is necessary to deduct the above items.

(*b*) The method of arriving at net income stated in Section D of the said Act as applied to this interstate carrier, is not net income as the same is defined and arrived at under the Standard Classification of Accounts of the Interstate Commerce Commisison, in that the Standard Classification of Accounts directs that there shall be deducted from the net operating income not only the deductions provided for in said law of North Carolina, but in addition thereto the following:

Rent for leased roads
Joint facility rents
Miscellaneous rents
Separately operated properties—loss
Interest on unfunded debt
Income transferred to other companies
Miscellaneous income charges
Interest on funded debt.

170 The result is that the machinery provided for by the said statute for the ascertainment of net income does not in truth and in fact produce net income, which under Section 101 it is declared to be the purpose of the said Act to tax. Furthermore, the method outlined in said law for arriving at net income produces a figure which is not in truth net income, but which contains in part gross income, and in so far as it does include gross income, which gross is derived from interstate commerce, said tax is a direct burden upon interstate commerce and is void under the Commerce Clause of the Constitution of the United States.

(*c*) Plaintiff further says that the said statute is unconstitutional and void for that in computing net income it permits corporations

other than this plaintiff and like corporations named in said Section 202 to make the many deductions set forth in Section 306 of said Act. This discrimination in favor of corporations and individuals against railroad companies in making deductions in order to ascertain net income violates the Constitution of North Carolina and the United States.

(*d*) Plaintiff further says that the statute is violative of Article 5, Section 3 of the Constitution of North Carolina, for that it does not levy upon railroads and other public service corporations named in said Section 202 a tax on net income, but levies a tax upon operating revenue derived from interstate and intrastate commerce and does not permit the deductions necessary and incidental to the business of plaintiff and expended by it from said income in order to determine net income, and is in violation of the Interstate Commerce Clause of the Constitution of the United States in that it permits a tax as an income tax to be placed on gross income derived from interstate commerce, thereby burdenihg interstate commerce.

(*e*) That said so-called Income Tax Law violates the Transportation Act of Congress and the Interstate Commerce Act in that
171 it seeks to prescribe a method of accounting by this interstate carrier, when said Acts of Congress have delegated the power to prescribe said accounting to the Interstate Commerce Commission and the said Commission has prescribed and directed that this plaintiff and other interstate carriers keep their accounts in accordance with the methods so prescribed by it.

S. R. PRINCE,
Solicitor for Plaintiff.

STATE OF NORTH CAROLINA,
County of Guilford:.

Murray R. Hubbard, being first duly sworn, deposes and says: That Southern Railway Company, plaintiff herein, is a corporation and that he is one of its officers, to-wit; Tax Commissioner; that he has read the foregoing amendment to the bill of complaint and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein set forth on information and belief and that as to those matters he believes it to be true.

MURRAY R. HUBBARD.

Subscribed and sworn to before me this 24th day of January 1922.

[SEAL.]

R. L. BLAYLOCK,
Clerk U. S. Court.

172 *Affidavit of B. M. Rogers.*

Filed January 24th, 1922.

STATE OF NORTH CAROLINA,
County of Alamance, ss:

Affiant B. M. Rogers, says that he is Register of Deeds for Alamance County, and has been a resident of Alamance for years; that he has made an examination of all deeds recorded in Alamance County, from January 1, 1921, to June 30, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000.00) and also of the assessed value of the real estate embraced in said deeds for the year of 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the consideration shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows; from the amount of the Federal Tax imposed and entered on the record, viz: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents; and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $517,606.00 and that the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $355,184.00. The statement is hereto attached, marked Exhibit "A."

B. M. ROGERS,
Affiant.

Subscribed and sworn to before me this 10th day of January, 1922.
MIRIAM WILLIAMS, [SEAL.]
Notary Public.

My Commission expires 11/22/22.

Date of conveyance, month, day.	Grantor.	Grantee.	Jan. 1, 1921-June 30, 1921, consideration.		1921 assessed value.
5/1	A. E. Sykes	A. H. Fogleman	$6,000		$6,050
5/23	J. R. McNally	Flora Joyner	2,375		1,275
4/30	L. R. Blanchard	Real Est. Ins. Co.	3,770		3,953
5/24	Pleasant Dixon	John M. Baker	1,995		2,280
5/20	H. F. Mitchell	John F. Thompson	5,500	s	4,250
5/11	T. B. De Loach	Julia L. Deloach	4,000		4,000
6/4	W. B. Bowen	D. B. Wagoner	3,500		4,250
3/7	H. Glen Holt	R. A. Sharpe	2,600		2,125
6/1	J. L. Kernodle	O. H. Chaplin	5,000	s	2,175
6/23	C. B. Riddle	Mebane Real Est. & Trust Co.	5,000	s	3,000
6/4	S. G. Foster	J. M. Crutchfield	3,000		2,500
6/13	W. H. Kirkpatrick	E. T. Horne	2,000	s	1,800
6/28	Jno. W. Glosson	W. D. Bowman	1,700		765
5/30	H. T. Sharpe	S. C. Jones	2,000	s	1,403
6/20	G. B. Prickett	Stella Loy	1,800		2,720
1/10	Jno. A. Trollinger	Wm. Carter	1,567		1,424
6/4	J. M. Crutchfield	S. T. Foster	2,000		1,700
2/16	R. D. Farrell	Ala. Motor Co.	1,025		829
3/26	F. L. White	M. B. Miles	1,100		500
3/5	W. A. Cash	A. G. Ausley	2,500	s	2,338
6/28	C. M. Teer	Ala. Ins. & R. E. Co.	4,000	s	3,500
5/25	Jas. Brown	W. A. Clapp	1,750		1,530
4/30	J. T. Dick	Jno. R. Smith	2,000	s	2,550
5/14	J. R. Smith	Endora C. Smith	1,000		340

3/14	C. E. Tate	Effie A. Tate	3,500		2,965
2/1	Mebane R. E. & T. Co.	C. B. Riddle	5,000	s	3,000
2/12	" "	Alice M. Bowland	9,500		6,000
2/22	" "	Garland Hoffman	5,000	s	3,400
2/22	Ala. Ins. & R. E. Co.	C. M. Friddle	3,500		2,125
3/3	Mebane R. E. & T. Co.	Jno. A. Trollinger	30,000	s	14,760
2/1	Ala. Ins. & R. E. Co.	H. T. Baldwin	2,500		1,800
3/18	Mebane R. E. & T. Co.	J. H. McLeod	14,000	s	8,000
3/15	" "	Ben. F. Smith	3,000	s	2,288
3/15	" "	Kirkman P. & H. Co.	4,500	s	3,000
3/23	" "	B. B. Vaughn	10,000	s	5,950
3/29	Ala. Ins. & R. E. Co.	Dora I. Hinshaw	4,500		2,762
4/1	Mebane L. & M. Co.	Jas. S. Cheek	1,248		1,020
1/4	Ala. Ins. & R. E. Co.	H. B. Hunter	8,000	s	7,000
2/28	Real Est. & Ins. Co.	J. G. Levey	9,600		5,984
4/8	Ala. Ins. & R. E. Co.	B. F. Thornton	2,705		2,300
4/1	" "	W. P. Fowler	1,750		1,500
2/28	Real Est. & Ins. Co.	David R. Barber	1,250		912
5/12	Mebane R. E. & T. Co.	W. H. Trollinger	5,500	s	3,975
3/11	Ala. Ins. & R. E. Co.	C. C. Howard	9,000		850
6/8	Sta. R. & S. Co.	F. B. Carboy	3,500		3,500
6/6	Mebane R. E. & T. Co.	Margaret Clegg	13,000		5,525
6/11	Ala. Ins. & R. E. Co.	Jennie L. Lasley	1,425		1,200
1/1	Mebane R. E. & T. Co.	W. B. Bowman	5,000	s	4,250
6/24	Standard R. & S. Co.	B. W. Everett	1,500	s	1,500
6/24	Ala. Ins. & R. E. Co.	W. P. Lawrence	1,875		2,100
6/7	" "	C. W. Whitt	2,725		2,125
5/25	" "	R. L. Self & A. T. Thompson	1,250		1,000
5/5	" "	H. & C. A. Hughes	5,000	s	7,228
1/20	Mebane R. E. & T. Co.	C. F. Bradshaw	2,000	s	1,800

Date of conveyance, month, day.	Grantor.	Grantee.	Jan. 1, 1921-June 30, 1921, consideration.		1921 assessed value.
1/20	Standard R. & S. Co.	F. W. Moore	8,000	s	6,750
1/22	A. L. Fuquay	Jno. A. Murchison	7,000		3,396
1/15	Harden & May	W. E. Payne	1,295		1,063
1/29	A. L. Pickard	——— ———	2,500	s	2,150
1/31	Beulah Allen	Ruth Hinshaw	1,000	s	528
1/1	J. H. Holt	A. B. Fitch	1,000		3,825
1/15	S. G. Morgan	Jno. H. Mebane	1,500	s	1,500
1/31	P. L. Cooper	B. Goodman & I. I. Levine	6,500		3,825
1/17	M. M. Gerringer	J. L. Jackson	3,750		2,040
2/4	J. W. Johnston	R. W. Traynham	2,500	s	3.500
2/12	L. C. Jordan	T. F. Carden	1,000		595
2/14	Robt. Montgomery	A. W. Hedgepeth	2,700		1,020
2/19	C. M. Euliss	R. Simpson	3,500		850
2/21	C. O. Smith	Peter Hughes	5.000		4,380
2/18	C. Martindale	Eli Abee	1,000		850
2/19	R. Simpson	Gile & Shepherd	2,500	s	2,550
3/7	B. D. Guthrie	T. A. Murphy	2,850		1,700
3/1	Thos. A. Smith	D. B. Moore	3,000		1,913
3/7	H. L. Graves	W. N. Thompson	1,200		1,250
2/21	J. G. Pritchett	Mebane R. E. & T. Co.	5,500		2,600
3/11	R. A. Coble	P. A. Sharpe	3,525		1,678
3/12	T. B. Deloache	S. W. Caddell	1,300		1,000
3/15	W. S. Crawford	T. C. Phillips	1,500		1,400
3/9	R. W. Malone	Mebane R. E. & T. Co.	2,250		1,318

3/7	R. M. Morrow	Nat'l R. C. Co.	13,000		12,750
3/29	Chas. A. Hinshaw	Ala. Ins. & R. E. Co.	2,300		2,000
4/1	J. H. McLeod	S. G. Morgan	1,500		1,000
2/28	J. E. Carrigan	W. J. Graham	12,000		7,750
4/1	James G. Holt	Stan. R. & S. Co.	1,500		1,000
1/11	M. R. Kirkman	E. T. Sharpe	2,000		1,360
2/5	A. L. King	L. Tillman	2,500		1,700
4/25	C. O. Smith	John H. Jordan	4,564		4,380
4/24	John A. Ireland	W. E. Herndon	1,200		850
4/25	Dora Lineberry	E. T. Horne	2,000		1,500
1/29	John A. Barnwell	David R. Haith	6,000		3,613
5/5	C. E. Tabscott	Ed. W. Ross	6,000		5,856
5/3	W. E. White	White Furn. Co.	5,000		4,500
5/14	A. D. Tate	James H. Rich	1,500	s	1,025
3/11	J. W. Fix	Addie Ray Boone	15,700		10,000
3/31	Dixie Milling Co.	Dr. J. L. Kernodle	7,000		6,373
4/7	Ala. Ins. & R. E. Co.	Mebane R. E. & T. Co.	7,500		4,000
4/1	J. T. Albright	Bessie Foust	4,200		3,400
3/16	Luco Loyd	Susan Crawford	2,250		4,637
5/12	Mrs. Lucy J. Holmes	A. D. Tate	5,500		5,000
5/2	J. W. Page	M. B. Lindsay	27,000		9,775
5/26	J. M. Fix	A. E. Sykes	1,712		1,200
4/28	D. V. Quakenbush	Nettie Oldham	3,500	s	2,500
2/18	O. J. Paris & A. M. Hadley	C. E. Coggins	3,500		2,550
6/11	N. C. Railroad Co.	Stan. R. & S. Co.	60,000		30,600
6/20	Graham R. E. Co.	Ala. Ins. & R. E. Co.	1,000		1,200
4/15	J. Dolph Long	E. B. Huffine	3,600		5,100
3/1	Central L. & T. Co.	H. Frank Mitchell	1,700.00		808
		Total	$170,426.00		$108,867.00

174½ In the District Court of the United States for the Western District of North Carolina.

In Equity.—No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS, et al.

Affidavit of C. J. O'Brien in Support of Application for Interlocutory Injunction.

175 *Affidavit of C. J. O'Brien.*

Filed Jan. 24, 1922.

In the District Court of the United States for Western District of North Carolina.

In Equity.—No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS et al.

C. J. O'Brien, being duly sworn, says that he has brought together the information shown in the attached affidavits, for the several Counties of North Carolina, set opposite the name of each affiant, and finds that said affidavits show:

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Alamance	B. M. Rogers	$517,606.00	$355,184.00	68.62
Alexander	J. P. Crouch	50,175.00	24,860.00	49.54

Alleghany	E. L. McMillan	97,167.56	70,088.00	72.13
Anson	Fred J. Coxe	111,603.42	67,721.00	60.68
Ashe	C. W. Higgins	225,374.89	122,591.00	54.39
Avery	Avery Goodman	63,480.50	52,975.00	83.45
Beaufort	Chas. M. Weeks	555,540.00	393,592.00	70.84
Bertie	P. T. Perry	304,883.80	153,828.00	50.46
Bladen	D. B. Johnson	131,930.00	123,267.00	93.40
Brunswick	L. J. Poisson	61,610.00	44,600.00	72.39
Buncombe	George H. Wright	3,261,452.00	2,255,839.00	69.16
Burke	George H. Battle	96,380.00	51,268.00	53.19

176

Cabarrus	John H. Oglesby	146,619.00	90,602.00	61.78
Caldwell	John M. Crisp	85,905.00	74,960.00	87.26
Camden	P. G. Sawyer and M. B. Simpson	107,200.00	47,024.00	43.85
Carteret	D. W. Morton	121,433.00	119,800.00	98.66
Caswell	E. F. Upchurch	92,506.00	56,660.00	61.25
Catawba	Klutz B. Clippard	369,116.00	211,231.00	57.22
Chatham	Jas. L. Griffin	99,445.00	58,594.00	58.90
Cherokee	W. M. West	128,522.00	84,042.00	65.39
Chowan	R. W. Boyce	106,545.00	97,300.00	91.32
Clay	Wayne L. Swanson	54,550.00	39,010.00	71.51
Cleveland	R. L. Weathers	428,109.35	301,044.00	70.30
Columbus	L. V. Grady	228,820.00	167,222.00	73.08
Craven	Wm. Dunn, Jr	379,831.66	310,610.00	81.77
Cumberland	E. L. Hall	414,122.03	270,615.00	65.35
Currituck	P. G. Sawyer and M. B. Simpson	108,781.86	72,210.32	66.37
Dare		.....	.....	....

Affidavit of C. J. O'Brien—Continued.

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Rockingham	Nurna Winstead	815,821.00	524,584.00	64.30
Rowan	Max L. Barker	179,097.90	130,391.75	65.52
Rutherford	M. T. Wilkie	106,706.93	79,672.00	74.70
Sampson	H. A. Grady	222,556.00	110,837.00	49.80
Scotland	T. J. Dunn	61,200.00	39,561.00	64.64
Stanley	George P. Palmer	151,374.00	119,256.00	78.78
Stokes	N. Earl Wall	169,465.00	100,339.00	59.20
Surry	B. F. Folger	198,624.00	108,860.00	54.80
Swain	D. E. Nichols	55,435.00	40,374.00	72.83
Transylvania	Roland Owen	39,950.00	24,870.00	62.25
Tyrrell	A. Melson	48,603.33	34,232.00	70.41
Union	M. L. Flow	473,906.00	331,924.00	70.00
Vance	Robert G. Kittrell	500,066.00	307,311.00	61.50
Wake	H. E. Glenn	810,175.00	716,648.00	88.45
Warren	E. C. Price	131,427.33	69,200.00	52.60
Washington	Z. V. Norman	112,102.50	58,230.50	51.95
Watauga	T. E. Bingham	207,632.00	133,018.00	64.07
Wayne	D. E. Grantham	244,675.00	87,851.00	35.91
Wilkes	Frances Hendren	113,512.40	66,214.00	58.33
Wilson	R. L. Brinkley	304,964.00	191,107.00	63.44
Yadkin	John D. Reece	71,495.00	48,128.50	67.31
Yancey	C. C. Caraway	194,974.00	173,972.00	89.22
Total		$30,598,475.24	$20,373,684.07	66.58

[SEAL.] (Signed) C. J. O'BRIEN.

Subscribed and sworn to before me, this 24th day of January, 1922.

[SEAL.] (Signed) C. J. BLAYLOCK,
Clerk U. S. Court.

178½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY
vs.
A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Further Affidavits Filed January 24, 1922, in Support of Plaintiff's Application for Interlocutory Injunction.

S. R. Prince,
Solicitor for Plaintiff.
L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
Of Counsel.

179 *Affidavit of Murray R. Hubbard.*

Filed Jany. 24, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Affidavit of Murray R. Hubbard.

STATE OF NORTH CAROLINA,
County of Guilford:

Before me, R. L. Blaylock, Clerk, U. S. District Court Western District of North Carolina, personally appeared Murray R. Hubbard, who, being by me first duly sworn, on oath says:

(1) That the statement in the affidavit of the members of the former State Tax Commission to the effect that Southern Railway Company submitted as an evidence of its true value its investment
180 account and insisted that the proportion of its total investment account which its main line mileage within the State of North Carolina bore to the total main line mileage would give a fair value of the property of Southern Railway Company, except valuable terminals outside of the State, is incorrect; on the contrary, he insisted orally and in brief before the State Tax Commission and again before the Commissioner of Revenue that the Southern Railway Company's investment account was not a true index of the value of its property in North Carolina for tax purposes, and that he is the only person who submitted any facts or made any statement before the Tax Commission on behalf of Southern Railway Company.

(2) That he, as representing Southern Railway Company, furnished to the Commission, in response to its demand, a mass of detailed information as to the cost of reproduction of the properties of his Company in the State of North Carolina; said statements were correct and accurate as to the rolling stock and equipment. It was stated that as to the physical value of the property, other than rolling stock, that was as complete as the limited time given Southern Railway within which to prepare the same permitted. He is able to set out at this time that the values presented in said accounts approximated the values now given out by the Bureau of Valuation of the Interstate Commerce Commission in their tentative report, as set forth in the bill filed in this case; that upon filing the
181 same the Tax Commission declined to consider it, stating that it was worthless for the purpose furnished.

(3) That he attaches hereto a classification of accounts prescribed by the Interstate Commerce Commission and followed by the Southern Railway Company in the keeping of its books and accounts. He has been furnished by the Accounting Department of Southern Railway Company with the actual results of operations for ten months and the estimated result for two months of the year 1921; that if the amount upon which the income tax in North Carolina is to be paid is arrived at in accordance with the income tax law, the amount of said tax to be paid by the Southern Railway Company for the year 1921 will approximate $78,000.00; that if the amount upon which said income tax for the State of North Carolina is based is the net income as the same is arrived at by following the Interstate Commerce Commission's classification of accounts, the tax to be paid for the year 1921 will approximate $8,000.

(4) That he has for and on behalf of Southern Railway Company paid during the year 1921 on the agreed assessed value of sixty million dollars to the Counties, cities, towns, and school districts within the State of North Carolina the total sum in taxes of $688,163.75. That the Southern Railway Company paid in the year 1920 in taxes to the said Counties, cities, towns, and separate school

districts the total sum of $652,900.49. In other words, due to increase in tax rates, the Southern Railway Company has
182 already paid on the sixty million dollar assessment the sum of $35,263.26 in excess of the amount paid in 1920 on the assessment of ninety-six million dollars; that the sum paid in 1921 will be increased by tax bills submitted by several Counties, cities, towns, and school districts, which have not been paid due to discrepancies therein, an added sum of $26,714.22; that the sum the Southern Railway Company will be required to pay if the ninety-six million assessment remains will amount to $1,243,715.97. In other words, the actual increase in taxes paid and to be paid over the year 1920 on the ninety-six million dollar assessment, if that remains, will be the sum of $368,622.38.

(5) That the Atlantic and Yadkin Railway Company has paid to Counties and municipalities for the year 1921 on the agreed assessment of $1,975,806.00 the sum of $22,086.18, whereas in 1920 it paid on an assessment of $4,104,710.00 the sum of $26,423.95. The reason for the amount paid in 1921, notwithstanding the reduced assessment is the very marked increase in tax rates. If the assessment of $4,104,710.00 remains, the Atlantic and Yadkin Railway Company will pay total taxes of $50,091.50.

(Signed) MURRAY R. HUBBARD.

Subscribed and sworn to before me this 24th day of January, 1922.

[SEAL.] (Signed) R. L. BLAYLOCK,
Clerk, U. S. District Court.

183 *Affidavit of A. H. Plant.*

Filed Jany. 24, 1922.

DISTRICT OF COLUMBIA,
City of Washington:

Before me, Harry K. Pimper, a Notary Public in and for said District, personally appeared A. H. Plant, who, being by me first duly sworn, on oath states:

That he is now and since March 1, 1920, has been Assistant to President of Southern Railway Company. From January 1, 1898, to June, 1918, he was the executive accounting officer of Southern Railway Company. From June, 1918, to February 29, 1920, he was Federal Auditor for the United States Railroad Administration and as such directed the accounting for operations of Southern Railway Company's properties, which, during that period, were operated by the United States Railroad Administration.

That as such executive accounting officer of Southern Railway Company, he formulated and prescribed the accounting methods of the said Railway Company and directed and supervised its accounts

in accordance with such methods as were formulated and prescribed by him.

That under the accounting rules so prescribed, the actual revenues derived from intrastate freight and passenger traffic within a given State can be and are determined, and that revenues derived from mail, express, and miscellaneous traffic can be apportioned
184 with a fair degree of accuracy as between intrastate and interstate.

That on such bases of accurate accounting and fairly accurate apportionment, the intrastate revenues within the State of North Carolina for the year ended December 31, 1920, were:

Freight	$3,029,323.99
Passenger	4,228,000.88
Mail	597,289.01
Express	368,556.00
Miscellaneous	335,219.37
Total	$8,558,389.25

That it has been found impossible, except at a prohibitive cost, to apportion in like manner operating costs to the two classes of traffic, that is to say, operating costs and taxes to do intrastate business and operating costs and taxes to do interstate business. Therefore, no effort has been made in the past to currently set up or apportion operating expenses and taxes separately to the two classes of traffic. On the other hand, under the accounting rules prescribed by him, operating expenses are assigned to each State, including the State of North Carolina, as a whole.

That upon such assignment it was found for the year 1920 that the cost to operate in North Carolina per dollar of both intrastate and interstate revenues earned within the State was 78.08 cents.
185 This 78.08 cents, however, does not fully represent the cost to earn a dollar of revenue within the State because the expenses incurred within the State are not charged with certain elements of costs incurred outside of the State which are properly chargeable to the revenues earned within that State.

That on various and sundry occasions it became necessary to determine as accurately as possible the operating costs to earn a dollar of intrastate revenue within the borders of certain States, among them the State of North Carolina. In order to do this, it became necessary to place on each train a special agent or auditor who made careful examination of each individual transaction handled by the trains and to set each transaction out and apply to it the cost incurred in handling such traffic. These examinations were made for the purpose of fixing as accurately as it could be fixed the relative costs per dollar of revenue on the two classes of traffic. The costs for this work exceeded something over $18,000.00 per month. The result of it was that it was found, not only in the State of North Carolina, but in other States, that the cost to earn a dollar of intrastate revenue within a given State was at least fifteen cents greater than the cost

to earn a dollar of revenue on both intrastate and interstate traffic. So that, if the aggregate cost to earn a dollar of both intrastate and interstate traffic in North Carolina be 78.08 cents, the cost to earn a dollar of intrastate revenue would be not less than 93.08 cents.

186 That by applying this per dollar cost of 93.08 cents to the total intrastate revenues earned within the State, namely, $8,558,389.25, would produce as a minimum intrastate expense, including taxes, within the State of North Carolina for the year ended December 31, 1920, $7,966,148.71, leaving as net from intrastate traffic within that State for the year before mentioned $592,240.54.

(Signed) A. H. PLANT.

Subscribed and sworn to before me this 20th day of January, 1922.

(Signed) HARRY K. PIMPER,

[SEAL.] *Notary Public, District of Columbia.*

187 *Affidavit of L. H. Skinner.*

Filed Jany. 24, 1922.

DISTRICT OF COLUMBIA,
City of Washington:

Before me, Harry K. Pimper, a Notary Public in and for said District and City, personally appeared L. H. Skinner, who, being by me first duly sworn, on oath states:

That he is at this time Purchasing Agent of Southern Railway Company and has been connected with the Purchasing Department of said Railway Company for sixteen years; that as such Purchasing Agent and through reports of other branches of the Purchasing Department of Southern Railway Company he has been and is familiar with the prices paid by Southern Railway Company for its materials and supplies.

That he attaches hereto a statement of the principal articles purchased by Southern Railway Company, which statement shows the unit prices of said articles May, 1920, compared with May, 1921; that a composite percentage of said articles and prices shows an average percentage of reduction May, 1921, under May, 1920, of 35 per cent.

That he has examined the Iron Age, a recognized publication, which set forth monthly an annual composite price list of iron and steel articles; that the Iron Age for January 5, 1922, on page 60, shows a composite price for pig iron for May, 1920, to have

188 been $43.64 per ton, and the like figure for May, 1921, to have been $22.78 per ton, or a percentage reduction of 47 per cent plus; that the said Iron Age of January 5, 1922, sets out the composite prices of finished steel products, which includes quotations on steel bars, beams, tank plates, plain wire, open-hearth rails, black pipe, and black sheets, in cents per pound to have been for May, 1920, 3.804, and for May, 1921, 2.764, or a percentage of reduction May, 1921, under May, 1920, of approximately 27½ per cent.

That the foregoing figures taken from the Iron Age bear out and corroborate the percentage of reduction given by him above on actual purchases made by Southern Railway Company.

(Signed) L. H. SKINNER.

Subscribed and sworn to before me this 19th day of January, 1922

(Signed) HARRY K. PIMPER,

[SEAL.] *Notary Public, District of Columbia.*

189 Ex. "A."

Memorandum of Prices for Materials Purchased by Southern Railway Company During May, 1920, and May, 1921.

Description.	Unit of price.	Price May, 1920.	Price May, 1921.
Roadway Materials:			
Steel Rails (open hearth)	Gross Ton	$47.60	$47.60
Track Spikes	Per Cwt	4.15	3.33
Track Bolts	"	5.25	4.15
Rail Joints (Weber 85 lb.)	Each	2.83	2.74
Spring Frogs (No. 19, 85 lb.)	"	128.60	92.30
Rigid Frogs (No. 10, 85 lb.)	"	80.76	59.40
Switches, Complete (85 lb.)	"	106.25	75.75
Switch Points (85 lb.)	"	52.35	42.20
Switchties, Oak	Per M Ft. BM	45.00	19.00
Switchties, Pine	"	50.00	18.75
Crossing Plank, Oak	"	50.00	30.00
Crossties	Each	1.33	.77
Bridge & Building Material:			
Bridge Ties & Guard Rail Pine, 8x10x11, 8x8x22	Per M Ft. BM	51.00	18.25 (E)
Stringers, Pine, 7x16x27	"	75.00	25.75 (E)
Sills & Posts, Pine—			
12x12x13' to 20'	"	57.56	21.25 (D)
12x12x22' to 30'	"	60.56	22.50 (D)
Bracing Pine, 3x10x24' to 30'	"	59.00	19.25 (E)
Creosoted Pine Lumber	"	89.50 (B)	49.25 (E)
Creosoted Pine Piles	Per Lin. Ft.	.56¾ (A)	.28
Shop Materials:			
Rolled Steel Coach Wheels (33").	Each	48.00	44.75
Locomotive Tires (rough bored).	Per Cwt	6.85	5.85
Springs (Coil)	"	5.15	3.90
Springs (Elliptic)	"	7.15	5.90
Car Couplers (5x7 base)	Per Pair	47.55	39.05
Steel Bars	Per Cwt	2.60	2.35
Steel Shapes	"	2.70	2.45
Steel Plates	"	2.80	2.45
Brass Castings	"	25.80	18.35
Journal Bearings	"	19.265	13.75
190 Malleable Castings (average)	"	12.00	8.80
Grey Iron Castings	"	3.90	4.25
Steel Castings (average)	"	7.00	8.25
Fuel Oil (in tank cars)	Gallon	.1057	.0393

Description.	Unit of price.	Price May, 1920.	Price May, 1921.
Shop Oak	Per M Ft. BM...	45.00	19.75
1" Boards, Pine	" ...	46.73	15.93 (D)
Car Sills 5½x9½x40' Pine	" ...	52.13	20.50 (C)
Car Siding	" ...	105.00	27.25
Car Lining & Roofing	" ...	68.75	21.50
Car Docking	" ...	48.00	17.90
Train Materials:			
Valve Oil (in tank cars)	Gallon	.655	.5625
Car Oil (in tank cars)	"	.335	.2475
Signal Oil (in barrels)	"	.70	.50
Illuminating Oil (in tank cars)	"	.16	.085
Packing Waste	Per Cwt.....	18.00	9.00

Where we did not make purchase of material in May the prices shown are based on month of nearest purchase.

(A) Based on June, 1920 price.
(B) " " August, 1920 price.
(C) " " April, 1921 price.
(D) " " June, 1921 price.
(E) " " July, 1921 price.

191 *Opinion.*

Filed March 18, 1922.

In the District Court of the United States.

In Equity.

SOUTHERN RAILROAD COMPANY, ATLANTIC AND YADKIN RAILWAY Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Norfolk-Southern Railroad Company

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, and Others.

Before Waddill, Circuit Judge; Boyd and Connor, District Judges.

Per Curiam:

Bills were filed in equity by the above named companies, to-wit: The Southern Railroad Company and the Atlantic and Yadkin Railway Company, in the United States District Court for the Western District of North Carolina and the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk-Southern Railroad Company, in the Eastern District of North Carolina, against the defendants A. D. Watts and A. D. Watts as Commissioner of Revenue, Baxter Durham, Auditor, Benjamin

R. Lacy, Treasurer, and James S. Manning, Attorney General of North Carolina, in which, for the causes therein set forth, they and each of them prayed for an interlocutory injunction restraining and enjoining the said defendants, in their individual and official capacity, from proceeding with the collection and the enforcement of payment against complainants, of certain taxes assessed or about to be assessed against complainants and their property, until
192 the final hearing of said causes for that, among other things alleged in the bills, the statutes of the State of North Carolina under, and pursuant to which, said taxes were assessed and sought to be enforced, were unconstitutional and void. Pursuant to the provisions of Section 266 of the Judicial Code, James E. Boyd, Judge of the Western District, called to his assistance in hearing said motions for interlocutory injunction in said causes, brought in the Western District, Edmund Waddill, Jr., Circuit Judge of the Fourth Circuit, and H. G. Connor, Judge of the District Court of the Eastern District of North Carolina, and H. G. Connor, Judge of the Eastern District, called to his assistance in hearing said motions, brought in the Eastern District, Edmund Waddill, Jr., Circuit Judge of the Fourth Circuit and James E. Boyd, Judge of the District Court of the Western District of North Carolina.

As required by the provisions of the statute, the said district judges in the causes pending in said District, made orders in which they directed the defendants to show cause, at a time and place therein named, why the interlocutory injunctions *w*hould not be granted as prayed for.

The motions in said causes were, by consent of the complainants and the defendants, by their attorneys, heard together, at Greensboro, North Carolina, on January 24th, 1922, when and where said judges being present said motions were heard upon the bills, answers, affidavits, exhibits and argument of counsel, for all parties in said causes.

The further consideration of the motions was, by consent of the counsel and order of the court, continued to Raleigh, North Carolina, on March 16, 1922, when and where said judges being present, proceeded to consider said motions upon the pleadings, affidavits, exhibits and briefs filed by Counsel.

It appears from the bills and answers that the said mo-
193 tions and prayer for final relief of complainants are based upon the following allegations and contentions.

(1).

That the property of complainants was not assessed in the same manner and by the same method as the property of the individual citizens of the state and that, the manner and methods by which complainants' property is appraised and assessed for taxation operates as an unjust and unlawful discrimination against complainants, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and that, thereby, complainants are deprived of their property without due process of law.

(2)

That the appraisal and assessment for taxation of the property of complainants are not made in accordance with the provisions of the Constitution and Statutes of the State of North Carolina and that said appraisal and assessment of taxes thereon are invalid.

(3)

That the appraisal of the value of complainants' property is in excess of its true value for the purpose of taxation as provided by the Constitution of North Carolina and is, therefore, invalid.

(4)

That the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States in the appraisal and assessment of complainants' property are violated, in that complainants' property, alleged by the State to be assessed at its true value for taxation, the property of other tax payers in the state, is appraised and assessed for taxation at less than its true value.

194 That the Franchise or Privilege Tax imposed upon complainants is invalid for that:

(1)

The ad valorem assessment is in excess of its true value for taxation and that the Franchise or Privilege Tax, based thereon, in accordance with the Statutes of the State, violates the Constitution of the United States and the State of North Carolina.

(2)

The Franchise or Privilege Tax is in truth and fact an ad valorem Tax and invalid, because not imposed upon the property of other citizens of the State.

(3)

That the Statute of North Carolina, under and pursuant to which the Franchise or Privilege Tax is imposed and sought to be enforced imposes a tax upon the privilege of doing business by complainants, both interstate and intrastate and is, therefore, a burden upon interstate commerce and thereby violates the Commerce Clause of the Constitution of the United States.

(4)

That, if the Franchise or Privilege Tax imposed upon complainants be valid, the method of ascertaining the value of complainants'

property as a basis for fixing the amount of said Franchise or Privilege Tax includes property of complainants used, as well in interstate as well as intrastate business and is, therefore a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

The Court, after consideration of the bills, exhibits, affidavits and argument of counsel, is of the opinion that, for the purpose of this motion only, complainants have neither in their pleadings,
195 nor upon the proofs adduced, made such a case as to entitle them to have an interlocutory injunction in said causes as prayed for, and the motions for such interlocutory injunctions in respect to the ad valorem and the Franchise and Privilege Tax should not be granted and said motions and each of them are denied.

The Court being of the opinion that the contentions sought to be made by complainants in regard to the imposition and enforcement of the Income Tax against complainants, as provided by the Constitution of North Carolina, Article V, Section 3, as amended, and the statutes enacted by the Legislature pursuant thereto and for the enforcement thereof are not presented upon the bills and proofs herein.

The Court, therefore, does not pass upon, or express any opinion with respect to the validity of the Income Tax, or the Statutes enacted for its enforcement. Complainants may, in respect to such income tax, proceed without prejudice in such manner as they may be advised.

Let this opinion and a copy thereof, be filed and an order drawn and signed to be filed in the record in each of said causes in accordance therewith.

The further proceedings in said causes, in the Courts of the District, in which they are pending, will be had as provided by the Judicial Code and the course and practice of said courts. The costs of the motion will abide the final decrees in said causes.

At Raleigh, North Carolina.
This the 18th day of March, 1922.

EDMUND WADDILL,
United States Circuit Judge, Fourth Circuit.
JAS. E. BOYD,
U. S. District Judge, Western District of No. Ca.
H. G. CONNOR,
U. S. District Judge, Eastern District of No. Ca.

196 *Order.*

Filed March 18, 1922.

In the United States District Court for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This cause came on this eighteenth day of March, 1922, before the United States District Court for the Western District of North Carolina, held by the undersigned three United States Judges sitting pursuant to the provisions of Section 266 of the Judicial Code, to be heard upon a motion for an interlocutory injunction to enjoin and restrain the State of North Carolina from collecting certain taxes enumerated in the complainant's bill, which motion was heard and considered upon the pleadings, and the affidavits filed respectively by the complainant and the defendants, and was argued by counsel. Whereupon the court composed of the three judges sitting as aforesaid, having filed an opinion denying the right of the complainant to have an interlocutory injunction, it is, for reasons stated in writing in said opinion filed in this cause, and pursuant thereto, adjudged, ordered and decreed that said injunction so prayed for, be and the same is hereby refused and denied. And it is further ordered that the defendants shall not proceed to enforce the
197 collection of taxes involved in this litigation, for the period of thirty days from the date of this order, to the end that the complainant may take such action in the premises as it is advised to

EDMUND WADDILL, JR.,
United States Circuit Judge,
Fourth Judicial District.

JAS. E. BOYD,
United States District Judge,
Western District of North Carolina.

H. G. CONNOR,
United States District Judge,
Eastern District of North Carolina.

197½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue, et al., Defendants.

Petition for Appeal to the Supreme Court of the United States and Assignments of Error.

S. R. Prince,
Solicitor for Complainant.
L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
C. O. Amonette,
Of Counsel.

198 *Petition for Appeal.*

Filed March 31, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue, et al., Defendants.

To the Honorable James E. Boyd, District Judge of the United States for the Western District of North Carolina:

The Southern Railway Company, the above named complainant, feeling aggrieved by the order of the court, consisting of Circuit Judge Waddill and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code of the United States, entered in the above entitled cause on the 18th day of March, 1922, refusing

and denying the interlocutory injunction applied for in this
199 cause to restrain the defendants, until the cause could be heard on its merits, does, as provided in Section 266 of the Judicial Code of the United States, hereby appeal to the Supreme Court of the United States from the order refusing and denying the interlocutory injunction applied for upon the grounds set forth in the assignments of error filed herewith, and complainant prays that its appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said appeal is based, duly authenticated, be sent to the Supreme Court of the United States, under the rules of such court in such cases made and provided.

And complainant further prays that the court enter an order continuing in effect the thirty day stay granted by the court in the order entered March 18, 1922, until the appeal herein prayed for shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

SOUTHERN RAILWAY COMPANY,
By S. R. PRINCE,
Solicitor.

200 In the Dist. Court of the U. S. for the Western Dist. of N. C.

In Equity.

No. 261.

SOUTHERN RY. CO., Complainant,

vs.

A. D. WATTS & A. D. WATTS, as Comr. of Rev., et al.

Assignments of Error.

Filed Mch. 31, 1922.

Now comes the complainant, in the above entitled cause, and in connection with its petition for appeal from the order entered March 18, 1922 (by the court convened under Section 266 of the Judicial Code of the United States), denying the motion for interlocutory injunction, files the following assignments of error:

The Court erred:

(1) In decreeing that the interlocutory injunction be denied.

(2) In holding that for the purpose of the motion for an interlocutory injunction only, complainant neither in its pleadings, nor upon the proof adduced, is entitled to have the interlocutory injunction applied for.

(3) In failing to hold that the assessment of complainant's property for taxation is in excess of its "true value" in money for the purpose of taxation as required by the Constitution of North Carolina and is therefore invalid.

(4) In failing to hold that the appraisal of complainant's property for taxation is not made in accordance with the provisions of the Constitution and Statutes of North Carolina, and that said appraisal and assessment of taxes are invalid and illegal.

201 (5) In failing to hold that the property of complainant was illegally assessed, in that the plan of valuation followed to arrive at the assessment complained of imported into the State of North Carolina values which are elsewhere, and that such plan so followed violates the Commerce Clause of the Constitution of the United States.

(6) In failing to hold that the manner and method by which complainant's property was assessed is illegal and operates as an unjust and unlawful discrimination against complainant in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that thereby complainant is deprived of its property without due process of law and denied the equal protection of the law.

(7) In failing to hold that the action of the Commissioner of Revenue, in declining to make a reduction in the value of complainant's property commensurate with the horizontal reductions made by the taxing authorities under the North Carolina law permit-ing such reductions on other property generally, was unjust discrimination, contrary to the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States.

(8) In failing to hold that the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the
202 Constitution of the United States are violated, in that complainant's property is alleged by the State to be assessed at its true value for taxation, while the property of other taxpayers generally in the State is appraised and assessed for taxation at less than its true value in money and that this appraisal and assessment of the property of other citizens and taxpayers of the State has been long continued and is arrived at under a scheme of taxation which shows intent to place an undue burden of taxation upon complainant and its property.

(9) In failing to hold that the scheme of taxation of the State of North Carolina and the assessment of the properties of the various classes of taxpayers is by settled purpose and intent so designed and carried out that, while the property of complainant is assessed at its true value in money, or more than its true value in money, the large proportion of the property in the State is assessed at less than its true value in money, thereby casting an undue and excessive burden upon complainant, in violation of the Uniformity Clause of the Constitu-

tion of the State of North Carolina and in violation of the Fourteenth Amendment to the Constitution of the United States.

(10) In failing to hold that the ad valorem assessment being in excess of true value for taxation, the so-called Franchise tax
203 based thereon violates the Constitution of North Carolina and the Constitution of the United States.

(11) In failing to hold that the so-called Franchise or Privilege tax is in truth and in fact an additional ad valorem or property tax upon complainant's property and is illegal and invalid because levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State and the enforcement of such void statute deprives complainant of its property without due process of law, contrary to the Constitution of the United States.

(12) In failing to hold that the so-called Franchise or Privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in inter and intrastate commerce and is, therefore, a burden upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(13) In failing to hold that if the Franchise or Privilege tax be imposed for the privilege of engaging in intrastate commerce, it is measured in part by the value of the privilege of engaging in interstate commerce, in that it is based upon the entire value, including values derived from use in interstate commerce, and is, there-
204 fore, a burden imposed upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(14) In failing to hold that if the so-called Franchise or Privilege tax is imposed for the privilege of engaging in intrastate commerce, the tax should have been assessed against complainant upon one-half of the ad valorem value, as provided in Section 82 (3½) of the Revenue Act of North Carolina of 1921, and that the tax assessed against complainant upon the full value of its property is, therefore, contrary to law and void.

(15) In failing to hold that the payment of the so-called Franchise or Privilege tax is enacted as a condition precedent to the right of complainant to do "any business" in the State, whether interstate or intrastate, and, therefore, unconstitutional and void.

(16) In failing to hold that the assessment made is void, in that it includes in the value used as a basis for arrival at the Franchise or Privilege tax the value of property not used in the business for which the privilege is exacted and such law and the enforcement thereof in the manner set forth violates the Fourteenth Amendment to the Constitution of the United States.

(17) In failing to hold that the tax system of the State of North Carolina, which includes an ad valorem tax on the full value
205 of its property in the State, including as a part thereof value it has due to its use in interstate commerce, plus a Franchise

or Privilege tax upon the full value of the said property for ad valorem purposes, plus an income tax of three per cent on its net operating income, does in practical operation result in a burden upon interstate commerce and violates the Commerce Clause of the Constitution of the United States.

Wherefore, plaintiff prays that the decree be reversed and that the court may be directed to enter a decree allowing the interlocutory injunction.

S. R. PRINCE,
Solicitor for Complainant.

L. E. JEFFRIES,
MANLY, HENDREN & WOMBLE,
A. B. ANDREWS,
C. O. AMONETTE,
Of Counsel.

206 *Notice of Application of Southern Railway Company for Stay of Proceedings and Order.*

Filed March 31, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

To the defendants in the above entitled action and Honorable James S. Manning, Attorney General of North Carolina, and Frank Nash, Assistant Attorney General, Solicitors for defendants.

You will please take notice that on Friday March 31st, 1922, at 10.00 o'clock A. M., or as soon thereafter as counsel may be heard, the above named complainant will apply to His Honor, James E. Boyd, United States District Judge for the Western District of North Carolina, at office in Greensboro, N. C., for an order allowing the complainant to appeal to the Supreme Court of the United States and granting a stay of proceedings until the appeal shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

SOUTHERN RAILWAY COMPANY,
By S. R. PRINCE,
Solicitor.

207 *Order Continuing Petition for Appeal and for Stay.*

Filed March 31st, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS, and A. D. WATTS, as Commissioner of Revenue, et al., Defendant-.

The petition of complainant for appeal and for an order staying the proceedings pending appeal came on to be heard this date, and, upon application of defendants for a continuance, it is ordered that the petition for appeal and for stay be and it is continued to 10 A. M., April 10, 1922, at Greensboro, N. C.

JAS. E. BOYD,
U. S. Judge.

March 31, 1922.

208 *Order Allowing Appeal & Fixing Bond.*

Filed April 10, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS, and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This matter coming on to be heard on the application of complainant for an appeal to the Supreme Court of the United States, under Section 266 of the Judicial Code of the United States, from the decree entered in this cause on the 18th day of March 1922, refusing and denying the interlocutory injunction applied for; and upon the assignment of errors filed in said cause and presented to the Court with the said application for appeal and for an order con-

tinuing in effect the thirty day stay granted by the Court in this case in its order entered March 18, 1922, until the appeal prayed for shall have been heard, passed upon and disposed of by the Supreme Court of the United States;

And all parties being represented by counsel now before the Court on due notice.

It is ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the order and decree filed and entered herein on the 18th day of March 1922, refusing and denying the interlocutory injunction prayed for, upon the giving of bond in the sum of $1,000.00.

It is further ordered that citation of appeal issue and be served upon the defendants or their attorney of record, and that the Clerk of this Court prepare and forward to the Supreme Court of the United States a transcript of the record of the proceedings, pleadings, affidavits, etc., upon which the judgment herein was rendered, duly authenticated.

209 The Court being of the opinion that the application to continue in effect the thirty day stay granted March 18, 1922 by the Court, consisting of Circuit Judge Waddill and District Judges Connor and Boyd, should more properly be heard and passed upon by the three judge court, that part of the petition of complainant is not now ruled upon, but is continued for hearing before the three Judges on a date to be later fixed, and the appeal hereinbefore allowed is without prejudice to complainant as to time of the hearing of the matter of further stay asked for.

This 10th day of April 1922.

JAS. E. BOYD,
U. S. Judge.

210 *Appeal Bond.*

Filed April 10th, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Know all men by these presents: That we, the Southern Railway Company, a corporation organized and existing under the laws of the State of Virginia, as principal, and Fidelity and Deposit Company of Baltimore Md., as surety, are held and firmly bound unto the above named A. D. Watts, and the other defendants in the sum of One thousand ($1,000.00) Dollars, to be paid to the said A. D. Watts and other defendants, their successors or assigns; to which payment well

and truly to be made, we bind ourselves and our successors jointly and severally by these presents.

Sealed with our seals and dated this 10th day of April, 1922.

Whereas in a suit pending in the District Court of the United States for the Western District of North Carolina between Southern Railway Company, Complainant, and A. D. Watts et al., defendants, a decree was rendered by the court, consisting of Circuit Judge Waddill, and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code, denying the complainant an
211 interlocutory injunction as prayed for, and the Southern Railway Company having prayed and been allowed an appeal under Section 266 of the Judicial Code of the United States, direct to the Supreme Court of the United States, and filed a copy thereof in the Clerk's Office of the said Court, and citation having issued, directed to the said A. D. Watts et al., citing and admonishing them to be and appear in the Supreme Court of the United States within the time required by law.

Now, the condition of the above obligation is such, that if the said Southern Railway Company shall prosecute its said appeal to effect, and answer all damages and costs if it fails to make its appeal good, then the above obligation to be void; else to remain in full force and effect.

SOUTHERN RAILWAY COMPANY,
By S. R. PRINCE,
General Solicitor.
FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,
EDWARD CARPENTER,
Attorney-in-Fact. [SEAL.]

Approved this 10th day of April, 1922.

JAS. E. BOYD,
U. S. District Judge.

212 *Citation and Acceptance of Service.*

Filed April 10, 1922.

UNITED STATES OF AMERICA:

The President of the United States to A. D. Watts and A. D. Watts, as Commissioner of Revenue, et al., Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be holden at the City of Washington, on the 8th day of May next, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Western District of North Carolina, wherein Southern Railway Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said appeal mentioned, should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand in the City of Greensboro, N. C., in the District above named, this 10th day of April 1922.

JAS. E. BOYD,
Judge of the District Court of the United States for the Western District of North Carolina.

Service of within citation accepted for all defendants April 10th, 1922.

A. D. WATTS,
Commissioner of Revenue, and other Defendants.
By WM. P. BYNUM,
Attorney.

213 *Stipulation of Counsel.*

Filed April 13, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,

—

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

It is stipulated and agreed by and between the parties to the above entitled cause;

That the Clerk, in making up the transcript of record on this appeal from the Order denying complainant's motion for an interlocutory injunction, shall include therein all pleadings, orders, motions, stipulations, affidavits and exhibits, constituting the entire record before the Court, except there may be omitted from the record the following:

(1) Exhibit A to the Additional Affidavit of M. R. Hubbard, which exhibit was a printed copy of the Rules of the Interstate Commerce Commission Governing Separation of Operating Expenses of Railways and Railway Accounting as Prescribed by the Interstate Commerce Commission.

(2) The Clerk shall not include as a part of the transcript the individual affidavits of the Registers of Deeds of the 100 Counties in the State of North Carolina, together with the tabulated lists of conveyances recorded from January 1, 1921 to June 30, 1921, and setting forth opposite each conveyance the consideration in the deed and the assessed value for taxation of the property conveyed.

(3) Return of the service of the notice of the hearing on plaintiff's application for an interlocutory injunction.

(4) Return of the service of the writ upon the various defendants.

(5) Statement attached to McCarthy's affidavit consisting of name of stock or bond par value, and market value, and total mar-
214 ket value for the years 1917, 1918, 1919, 1920, and 1921. The purpose here being to have in this transcript the affidavits as it was printed for the hearing before the three-judge Court.

The Clerk shall include as a part of the transcript one of said affidavits, to-wit: that of B. M. Rogers, Register of Deeds for Alamance County, N. C., together with the tabulated statement of deeds recorded and the deed value of each parcel conveyed and the assessed value for taxation of each parcel so conveyed, this one being typical of all as to the form and character of information contained therein. It is unnecessary to set forth the individual affidavits of deed and tax value taken from the records of each separate County in the State, because the information shown on said separate affidavits, containing the deed value of separate conveyances and a comparison of the tax assessment of each said parcel, is summarized in the affidavit of C. J. O'Brien, which is to be included in the transcript.

It is further stipulated that the Clerk may use in preparing the record on appeal printed copies of all such pleadings, documents, affidavits etc., as may be furnished by the parties hereto.

S. R. PRINCE,
Solicitor for Complainant.
JAMES S. MANNING,
Attorney General of N. C.,
Solicitor for Defendants.
FRANK NASH,
Assistant Attorney General.

215 *Order Denying Stay and Granting 30 Days to Make Application to Supreme Court.*

Filed April 18, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 163.

SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This matter coming on to be heard at Raleigh, North Carolina, on April 15, 1922, on the application of plaintiff for an order con-

tinuing in effect the thirty day stay granted by the Court in this case in its order entered March 18, 1922, until the appeal heretofore taken shall have been heard, passed upon, and disposed of by the Supreme Court of the United States, and all parties being represented by counsel now before the Court;

The Court, being of the opinion that the application to continue in effect the thirty day stay granted March 18, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this Court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States, denies the application for continuance of said stay until the appeal is decided by the Supreme Court of the United States.

And it appearing to the Court that the hearing of this application has been delayed through no fault of plaintiff's, and the Court being of the opinion that the status quo should be continued until the application for restraint pending the appeal can be made to and decided by the Supreme Court of the United States, Orders that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order.

EDMUND WADDILL, JR.,
U. S. Circuit Judge, Fourth Judicial Circuit.

JAS. E. BOYD,
U. S. District Judge, Western District of North Carolina.

H. G. CONNOR,
U. S. District Judge, Eastern District of North Carolina.

216 *Order to Transmit Record.*

And thereupon it is ordered by the Court here, that a transcript of the record and proceedings in the cause aforesaid together with all things thereunto relating be transmitted to the said Supreme Court of the United States of America, and the same is transmitted accordingly.

R. L. BLAYLOCK,
Clerk,

By H. M. CAUSEY,
Deputy Clerk.

Clerk's Certificate.

UNITED STATES OF AMERICA:

In the District Court for the Western District of North Carolina.

I, R. L. Blaylock, Clerk of the District Court of the United States, for the Western District of North Carolina, do hereby certify that the above and foregoing is a full, true, and complete copy of the record, according to the Stipulation of Counsel hereto attached as appears from the original papers and records in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at office in the City of Greensboro, in said District, on this the 18th day of April A. D. 1922.

[Seal of the United States District Court, Western Dist. of N. C.]

R. L. BLAYLOCK,
Clerk U. S. District Court,
By H. M. CAUSEY,
Deputy Clerk.

Endorsed on cover: File No. 28,882. W. North Carolina D. C. U. S. Term No. 368. Southern Railway Company, appellant, vs. A. D. Watts and A. D. Watts, as commissioner of revenue, et al. Filed April 25, 1922. File No. 28,882.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted]369

ATLANTIC AND YADKIN RAILWAY COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

FILED APRIL 26, 1923.

(28,383)

(28,883)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 928.

ATLANTIC AND YADKIN RAILWAY COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Proceedings in the district court of the United States for the western district of North Carolina	1	1
Caption	1	1
Bill of complaint	2	2
Application for interlocutory injunction	26	15
Order on application	29	17
Notice of hearing on application	31	18
Subpœna	33	19
Motion to dismiss bill	34	19
Order overruling motion to dismiss	35	20
Order allowing motion for leave to amend	36	21
Amendment substituting E. A. Brady, tax collector, instead of J. R. Steele	38	22
Consent decree	39	23
Answer	41	25
Exhibit A—Statement of taxable values, 1919-1920	73	46

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 16, 1922.

	Original.	Print.
Affidavit of Murray R. Hubbard	79	53
Motion to amend bill and order denying same	84	56
Amendment to bill	85	57
Affidavit of Murray R. Hubbard	89	60
A. H. Plant	107	69
J. B. Duke	118	74
C. E. A. McCarthy	130	79
T. H. Gatlin	132	80
R. E. Johnson	136	83
W. C. Idol	137	84
V. A. J. Idol	138	84
Frank Wineskie	140	85
Guy E. Wells	141	86
J. E. Kirkman	142	86
Harry Raymond	143	87
W. H. Slave	145	87
R. T. Amos	146	88
Wallace B. Davis	147	89
S. M. Hanes	148	89
R. H. Edwards	149	90
Geo. D. Bizzell	150	90
Fred R. Mintz	151	90
Members of the tax commission	152	91
A. J. Maxwell	160	96
Stidman Thompson	161	97
Exhibit Letter and statement of suggested distribution of assessments	162	98
Affidavit of Murray R. Hubbard	163	100
A. H. Plant	167	102
L. H. Skinner	171	103
B. M. Rogers	175	106
Exhibit A—Statement of assessment values	176	107
Affidavit of C. J. O'Brien	178	112
Per curiam opinion	182	118
Decree	187	121
Petition for appeal	189	123
Assignments of error	191	124
Notice of application for stay	197	127
Order continuing petition for appeal and for stay	198	127
Order allowing appeal and fixing bond	199	128
Bond on appeal	201	129
Citation and service	203	130
Stipulation as to transcript	204	131
Order denying stay and granting 30 days in which to make application to Supreme Court	206	132
Order to transmit record	207	133
Clerk's certificate	207	133

1 UNITED STATES OF AMERICA,
Western District of North Carolina:

At a District Court of the United States of America for the Western District of North Carolina Begun, Opened, and Held on the 18th Day of March, A. D. 1922.

Present: Hon. Edmund Waddill, Jr., Circuit Judge, and Hon. H. G. Connor and Hon. Jas. E. Boyd, District Judges, when and where the following proceedings were had, to-wit;

In Equity.

262.

ATLANTIC & YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

1½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

Bill of Complaint.

S. R. Prince, Solicitor for Plaintiff.
L. E. Jeffries, Manly, Hendren & Womble, Wilson & Frazier, of Counsel.

2 *Bill.*

Filed Sept. 22, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Atlantic & Yadkin Railway Company, a corporation chartered and existing under and by virtue of the laws of the State of North Carolina, brings this its bill of complaint against A. D. Watts, individually and as Commissioner of Revenue of the State of North Carolina, and a citizen of North Carolina, with his residence at Statesville, in the County of Iredell, State of North Carolina, in this Judicial District of the United States; Baxter Durham, Auditor of the State of North Carolina; Benjamin R. Lacy, Treasurer of the State of North Carolina, and James S. Manning, Attorney General of the State of North Carolina, citizens of the State of North Carolina;

George W. Flynt, Sheriff of Forsyth County, North Carolina;
David B. Stafford, Sheriff of Guilford County, North Carolina;
3 J. A. Brady, Sheriff of Randolph County, North Carolina;
A. P. Sands, Sheriff of Rockingham County, North Carolina;
W. L. Alberty, Sheriff of Surry County, North Carolina;

citizens of the State of North Carolina and inhabitants of the Western United States Judicial District thereof; and

G. W. Blair, Sheriff of Chatham County, North Carolina;
L. C. Rosser, Sheriff of Lee County, North Carolina;
E. O. Shelton, Sheriff of Stokes County, North Carolina;
citizens of the State of North Carolina; and

the following citizens of North Carolina, who hold the offiec of Tax Collector of the city or town of North Carolina set opposite their respective names, and each of whom is sued as such Tax Collector:

H. I. Carter, Bonlee;
S. C. Trogden, Franklinville;
H. P. Goldston, Goldston;
J. M. Reese, Liberty;

H. R. Martin, Madison;
R. V. Byerly, Mount Airy;
W. J. Simmons, Pilot Mountain;
J. R. Steele, Ramseur;
F. R. Thompson, Staley;
T. G. Rumbly, Stokesdale;
C. L. Gunter, Sanford;
J. J. Jenkins, Siler City.

4 Plaintiff respectfully represents and shows:

1. That it is a corporation of the State of North Carolina engaged in the business of a common carrier of freight and passengers in North Carolina, qualified to so engage under the laws of North Carolina. The line of railroad which it operates extends through eight counties of the State of North Carolina, with a mileage of 161.08 miles, all in North Carolina. It, in connection with other carriers is engaged in the transportation of goods and persons in interstate commerce from points within the State of North Carolina to points without, and from points without the State of North Carolina to points within the State.

2. This suit arises under the Constitution of the United States and the amount involved in this suit, exclusive of interest and costs, is in excess of three thousand dollars ($3,000).

3. Plaintiff shows that the tax sections of the Constitution of North Carolina and the plan of taxation now in force in the State of North Carolina, as applicable to this plaintiff and other railroads in the State, are as follows:

(*a*) Section 3 of Article 5 of the Constitution of North Carolina provides in part as follows:

"Sec. 3. Taxation Shall Be by Uniform Rule and ad Valorem; exemptions.—Laws shall be passed taxing, by uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and, also, all real and personal property, according to its true value in money * * * The General As-
5 sembly may also tax trades, professions, franchises, and income," etc.

Section 6 provides:

"Sec. 6. Taxes Levied for Counties.—The Total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or a general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section three, of the constitution: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property."

Section 9 of Article 7 provides:

"Sec. 9. Taxes to be ad Valorem.—All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same, except property exempted by this constitution."

(*b*) Prior to the first day of May, 1921, the Commissioners, selected from time to time under authority of law to establish the North Carolina State Tax Commission, constituted a Board of Appraisers and Assessors for railroad companies and other companies exercising the right of eminent domain.

6 (*c*) Under an Act of the Legislature of North Carolina, ratified March 8, 1921, Public Laws of North Carolina, Session 1921, page 288, the powers and duties of the State Tax Commission were transferred to and imposed upon the Commissioner of Revenue.

(*d*) Under Sections 62, 62(*a*), and 63 of the Act of the Legislature of North Carolina, approved March 8, 1921, page 225 of the Public Laws of North Carolina, Session 1921, at page 263 (hereinafter referred to as the Machinery Act), it is provided that railroad companies file certain returns.

(*e*) Under Section 64 of said Machinery Act, it was made the duty of the Commissioner of Revenue at such dates as real estate is required to be assessed for taxation, to first determine the value of the tangible property of each division or branch of such railroad, of rolling stock, and all other physical or tangible property.

Section 64 then provides:

"This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property."

Section 64 also provides:

"They (referring to the State Tax Commission, for which was thereafter substituted the Commissioner of Revenue as set forth above) shall then assess the value of the franchise, which
7 shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property."

Section 64 also provides:

"The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certify, on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city, or town;"

(*f*) Section 65 of the Machinery Act provided for a proportional valuation of interstate railroads in the proportion which the length of the main line of road in the State of North Carolina bears to the whole length of such main line of road, and to determine the value in the State of North Carolina accordingly. Said section contained the following proviso:

8 "Provided, the commission shall, in valuing the fixed property in this State, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State than the average value for the entire system. On or after the first Monday in July the said commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said commission may, if they see fit, require all argument and communications to be presented in writing."

(*g*) Section 82 (6½) of an act entitled, "An Act to Raise Revenue," approved March 8, 1921, page 147, of the Public Laws of North Carolina, Session 1921, at page 193, provides as follows:

"Railroads.—Every railroad company doing business in this State shall annually on or before the thirtieth day of July make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon
9 which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall

be one-tenth of one per cent (0.1%) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city, or town shall be allowed to collect any taxes under this section."

(*h*) The State of North Carolina levies also an income tax as provided in the Income Tax Act of 1921, which levies upon the net income for the calendar year 1921 taxes as set forth in said act, page 203, of the Public Laws of North Carolina, Session 1921, amounting to three per cent (3%) on the net income of this corporation.

4. For the year 1919 the ad valorem assessment of plaintiff's property was $1,975,806.00. In 1920 the State Tax Commission under the Revaluation Act (Chapter 84, Public Laws of North Carolina, 1919) increased the assessment of said property for 1920 to $4,104,710.00 and plaintiff paid 1920 taxes thereon under written protest. In 1921 the Revenue Commissioner assessed said property for ad valorem taxes at $4,104,710.00, being the same amount as 1920. A hearing was had before the Revenue Commissioner and facts adduced showing that said valuation was in excess of the true "actual value" of the property as the said term is defined in Section 28 (*e*) of the Machinery Act, reading in part as follows:

"The words 'actual value,' as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold."

This hearing resulted in the Revenue Commissioner adhering to the assessment of plaintiff's property at $4,104,710.00. The Plaintiff petitioned the Commissioner of Revenue for a review of the assessment of its property by the State Board of Equalization. The Revenue Commissioner, under advice of the Attorney General, held that the plaintiff and other railroads had no appeal to the State Board of Equalization or any other body, but he reheard the matter himself and declined to change said assessment.

5. Plaintiff shows that the assessment of its properties for 1921 as above set forth is in excess of the "true value" in money of said properties for tax purposes as the same is defined in Section 28 (*e*) of the Machinery Act. Neither the Tax Commission nor the Revenue Commissioner advised plaintiff at what sum the tangible property of plaintiff was assessed, as is provided in Section 64 of the Machinery Act. Neither the State Tax Commission nor the Revenue Commissioner advised plaintiff at what sum it or he

assessed the value of the franchise of plaintiff. Plaintiff was advised that the aggregate value of the physical or tangible property of this plaintiff and the franchise for 1921 was $4,104,710.00 for the purpose of ad valorem taxation. Plaintiff in 1920 was advised by the Tax Commission that it found the average net income (deducting operating expenses and taxes within North Carolina from operating revenue within North Carolina) of Southern Railway Company's lines, including this plaintiff and other independently operated lines, for the five years 1915-1919 to be $6,117,625.00. This sum, capitalized at six per cent, produced $101,960,413.00, which amount the State Tax Commission found to be the value for ad valorem purposes of Southern Railway Company, and Atlantic & Yadkin Railway Company, High Point, Randleman, Ashboro & Southern Railroad Company, and Yadkin Railroad Company, independently operated roads. This assessment was found to be approximately 107.8% in excess of the 1919 assessment of all
12 of said properties and the method of apportioning the assessment to this plaintiff was by taking the 1919 assessment of $1,975,806.00 and adding thereto approximately 107.8% thereof, which made the 1920 assessment $4,104,710.00, and inasmuch as the Revenue Commissioner has assessed the said property for 1921 at the same figure, it is stated that if the Commissioner used any method, the method employed was the same as that for 1920 above stated.

Plaintiff was in 1919 and is now a separate corporate entity from Southern Railway Company, separately operated, and an assessment cannot be legally arrived at to its prejudice by lumping it with Southern Railway Company and other lines. The illegality of the assessment so arrived at was accentuated and the damage increased because the total assessment so arrived at, from which the per cent of increase was found, was itself illegal and a gross overassessment, as will appear from the bill filed in this Honorable Court by the "Southern Railway Company vs. A. D. Watts, as Commissioner of Revenue et al.," to have said assessment against it declared illegal, and leave is prayed to refer to said bill as often as need be in this cause.

Plaintiff avers that in pursuing the above method of valuing plaintiff's property, the Commissioner of Revenue acted without warrant of law to plaintiff's great damage, and the assessment so arrived at is illegal and the exaction of taxes based thereon deprives plaintiff of its property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States
13 and the uniformity section of the North Carolina Constitution.

6. Plaintiff avers that the said assessment for 1921 of $4,104,710.00 is an overassessment of plaintiff's property, and is in excess of its true value for tax purposes, as defined by the laws of North Carolina, for the following reasons:

(1) Plaintiff avers that a statement of its operating results for the last five-year period, which statement was filed with the Commissioner of Revenue, is as follows:

Year to Dec. 31.	Gross operating revenue.	Operating expenses and taxes.	Net operating income or deficit.	
1920	$857,657.39	$1,022,326.91	$164,674.52	Deficit
1919	763,862.07	921,314.67	157,447.60	"
1918	614,031.54	691,111.78	77,080.24	"
1917	496,206.53	520,908.28	24,701.75	"
1916	456,773.99	439,366.83	17,407.16	Income
Total 5 years..	$3,188,531.52	$3,595,028.47	$406,496.95	Deficit
Average	637,706.30	719,005.69	81,299.39	Deficit

Plaintiff avers that the foregoing statement, which shows an average deficit for the five years of eighty-one thousand dollars, excludes the idea of arriving at a proper assessment of this company's property by the capitalization of net income. Notwithstanding this, because this company's property, together with the property of other companies, showed that there was a net income for all of them, the capitalization of which produced an increase of 107.8%, the Revenue Commissioner arbitrarily increased this company's assessment by 107.8%, which action was illegal.

14 (2) This company has a capital stock of $1,000,000.00 and a First Mortgage Bond issue of $1,500,000.00, making a total capitalization of $2,500,000.00. No dividends upon the capital stock have been paid or declared in recent years. It is not believed that this company's stock and bonds have any such market value as would result in a fair assessment by calculating the value of the property by a use of what is known as the stock and bond method, but if wrong in this, it avers that the fair market value of its capital stock and bonds would not exceed $1,750,000.00.

(3) The amount of property, investment in road and equipment as of December 31, 1919, of this road, filed with the Interstate Commerce Commission under Section 15 (*a*) of the Commerce Act, was $2,690,349.00. Defendant avers that its property account is not a proper criterion of the value of its property, but this figure is stated to show how unreasonable and excessive is the assessment complained of.

(4) Plaintiff avers that the Bureau of Valuation of the Interstate Commerce Commission has found as a tentative value of the cost of reproduction new of its said properties $3,282,353.00, and the reproduction cost less depreciation of said properties to be $2,693,272.00. If there be added to this the value of the lands which is not included, the maximum value of which is alleged to be not in excess of $193,298.00, we have a total value of $2,886,570.00. Plaintiff does not concede that the valuation found by the Interstate Com-

merce Commission for rate making purposes under the In-
14a terstate Commerce Act is the true value for tax purposes required by the Constitution and laws of North Carolina, but it is advised and states that wherever railroads have been able to show to the Commissioner of Revenue the tentative value as fixed by the Interstate Commerce Commission, the Commissioner of Revenue has recognized the same and the recognition thereof resulted in the reduction of the assessed value of said railroads many millions of dollars. It is averred that the true value of plaintiff's property for tax purposes under the laws of North Carolina is not as much as the total value so arrived at. Plaintiff alleges the amount of illegal taxes it will be required to pay on the old tax rates (which have been increased) will be in excess of $15,000.00, unless the collection thereof be restrained.

(5) Plaintiff avers that the Government of the United States, which took control, use, and operation of plaintiff's line under the Act of Congress known as the Federal Control Act and held it during the period of Federal control of railways, declined to pay any sum for the use of said railroad, that is, it was shown that instead of the owners making any profit from said road during the test period there was an annual deficit of $57,477.72, which deficit, as is shown above, has gradually increased.

(6) Plaintiff avers that no evidence, report, or statement before the Revenue Commissioner justified a finding that plaintiff's
14b property had any intangible or franchise value to be added to the tangible value to make the total value for ad valorem purposes, and that its property has not any intangible value.

Plaintiff therefore alleges that said assessment violates Section 3 of Article 5 of the Constitution of North Carolina, and to exact taxes thereon would deprive plaintiff of its property without due process of law and violate the Fourteenth Amendment to the Constitution of the United States.

(7) Plaintiff shows that the assessment made against it in 1920 was accepted under protest and the tax paid under protest, and that it has never recognized or admitted the correctness of any such assessment.

(8) Plaintiff shows that Section 28 (*a*) of the Machinery Act reads as follows:

"The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen (any vacancy which may have occurred to be filled by appointment of the board of county commissioners), shall meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of real property as heretofore appraised and assessed in the county as a whole is in excess of the fair value of such property at the time of meeting of such board.

The chairman of the board of county commissioners shall be
15 the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be secretary of the said board. The said board shall make proper inquiry and investigation into the existing values of real property as compared with the assessed and appraised values thereof in the several cities, towns, and townships of the county; and if it shall find that the assessed value of such property is in excess of the actual value, it shall find the average percentage of such excess in the county as a whole, or in the several cities, towns, and townships, and shall report its finding so made to the State Tax Commission not later than the twentieth day of April, one thousand nine hundred and twenty-one. The values so reported shall be the values at which the property shall be assessed for taxation, unless and until the same have been changed and revised by the State Tax Commission and certified to the board of county commissioners of such county, which shall be done not later than the first day of July, one thousand nine hundred and twenty-one."

Acting under said Section 28 (*a*), the respective County Boards of Review of the counties through which plaintiff operates made the following horizontal reductions in the percentage set opposite each in the assessed value in the said counties as a whole of real property assessed by said County Boards:

16 Name.	Per cent reduction.
Chatham	Equalization
Forsyth	0
Guilford	0
Lee	33-1/3
Randolph	33-1/3
Rockingham	25
Stokes	33-1/3
Surry	25

and upon report of their action to the State Board of Equalization, the assessments so horizontally reduced were not revised or changed by the State Board of Equalization and remain the value at which the real property other than that of railroads is now assessed.

The assessment of 1920 was by legal presumption at true value, in fact it was in excess of true value. The assessment of other property was by like legal presumption at true value. The County Boards made a horizontal systematic reduction, the Commissioner of Revenue made no similar reduction on plaintiff's property,—result discrimination and violation of the Constitution of North Carolina and of the Constitution of the United States.

Plaintiff avers that the Commissioner of Revenue, in fixing the assessment herein complained of, declined to consider or to give to plaintiff the benefit of any similar horizontal reduction in the right of way lands and structures thereon of plaintiff situated in said

respective counties, or to make any reduction in its assessment, and that this declination on the part of the Commissioner of
17 Revenue is a discrimination violative of Section 3 of Article 5 of the Constitution of North Carolina and violative of the Fourteenth Amendment to the Constitution of the United States, now especially pleaded and relied upon.

The result is that while other taxpayers generally will, due to decrease in assessment and increase in rate, pay no more, if as much, tax as last year, the plaintiff will, due to increase in rate, pay on the same assessment, it is estimated, an increased tax of approximately $7,500.00.

(9) Plaintiff is advised and, on information and belief, states that the tax rate either has been or will be materially increased in said counties in order that the amount of needed revenue may be raised. The result is that the assessment of plaintiff's property remains practically the same, whereas the assessment of other property is reduced. The causes which brought about a reduction in value of real estate in the counties in which the reduction was made apply with even greater force to plaintiff's property. The reduction in value has not been confined to real property of individuals, but applies alike to real estate of plaintiff and other railroads and to the property generally of plaintiff. Plaintiff avers that the reduction being horizontal, shows that it was not based upon any reduced value of any particular piece of real estate or upon facts individual to any individual taxpayer, but is due to general conditions applicable alike to all and should, therefore, be applied alike to all and
18 plaintiff should derive the benefit thereof, and its failure to receive the benefit thereof is contrary to Section 3, Article 5, of the North Carolina Constitution and to the Fourteenth Amendment to the Constitution of the United States.

(10) Plaintiff recognizes that values of other property in North Carolina are depressed and that there was doubtless just ground for a reduction in taxable values, but it shows that its values are largely dependent upon the values of other property in the State and its business fluctuates with the prosperity of the States it serves, including North Carolina, and it is common knowledge and a fact that plaintiff's property, like other railroad property, and the value of the use thereof, has been very greatly depressed in 1921 and, therefore, a commensurate reduction in its taxable values should have been made, and the failure to do so is discrimination and contrary to the uniformity clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States.

(11) Plaintiff avers that under the scheme of laws provided by the State of North Carolina, all taxpayers other than railroads and others assessed by the Revenue Commissioner have the right to appeal to and the duty of equalization is placed upon the State Board of Equalization consisting of three individuals. That prior to 1921 the railroad assessments were fixed by a board of three, known as the State Tax Commission, but under the law of 1921 the assess-

ment is fixed by the Revenue Commissioner and the law does
19 not provide, as was the legislative intention under the hereto-
fore recognized policy of the State, for any appeal from this assessment fixed by the one individual. This is a denial of the equal protection of the law and of the uniformity clause of the North Carolina Constitution.

(12) Plaintiff further shows that the so-called Franchise Tax is not a franchise tax measured by the value of the use of the property, but is in truth and in fact an ad valorem tax based on the value of the property. This being true, and it being further true that said so-called Franchise Tax is levied only upon corporations, the result is that this ad valorem tax is not levied equally upon all property holders in the State and is, therefore, contrary to Section 3 of Article 5 of the Constitution of North Carolina, and by reason of the enforcement thereof plaintiff is deprived of the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States. This Franchise Tax is one-tenth of one per cent (0.1%) on the assessed value of the property for ad valorem purposes, and, therefore, the fixing by the Revenue Commissioner of a sum greatly in excess of the true value for ad valorem purposes is doubly iniquitous and damaging because that excessive assessment is also used as the basis for the illegal so-called Franchise Tax.

Plaintiff's property is assessed for ad valorem purposes at the sum of $4,104,710.00, and on that sum it pays to each county the assessed rate of that county, just as other property holders do.
20 In addition to that, it pays to the State, under the guise of a franchise tax, one-tenth of one per cent (0.1%) on that same ad valorem value.

Plaintiff further avers that this so-called Franchise Tax violates the uniformity section of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States in that as to all other corporations it is measured by the capital stock, whereas as to railroads it is based upon the ad valorem value for taxation.

(13) Plaintiff further shows that the system of pyramiding taxes, as is evidenced by the tax laws of the State of North Carolina set forth above, including the income tax of three per cent (3%) on the net income, is a direct burden on interstate commerce contrary to the Constitution of the United States.

(14) Plaintiff avers that said assessment was improperly made and is not according to law and is excessive, oppressive and illegal and there was not before the Commission of Revenue any competent evidence to sustain it.

(15) Plaintiff shows that it will owe to the State, counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment of its property for taxes in the State of North Carolina, and inasmuch as it has no desire to embarrass the State, counties and municipalities in the collection of the revenue to

which they may be entitled, it expresses a willingness, if any
21 plan may be devised under which it may legally do so, to pay, at the time the same may come due according to law, the taxes based upon a certainly legal assessment of its property.

(16) Plaintiff avers that notice of the herein complained of assessment, dated August 27th, was received by plaintiff August 29th, and while the preparation of this bill was in progress it was advised that said assessment had been on September 2, 1921, certified to the State Auditor and to the several counties and municipalities in the State of North Carolina in which plaintiff's lines are subject to tax. Plaintiff has, therefore, joined as parties defendant hereto the State Auditor and the State Treasurer, who, under the law, respectively charge for collection and receive payment of the franchise tax, and the Sheriff of each county in which plaintiff has property, upon whom the law places the duty of collecting the county taxes levied upon said illegal assessment, and the City or Town Tax Collector of each incorporated city or town in which plaintiff has property, upon each of whom the law imposes the duty of collecting the city or town taxes on said illegal assessment, and unless said officers are joined in this suit, plaintiff will be required to institute a number of suits, all of which will involve the same and the one question of the validity of said assessment made by the Commissioner of Revenue. The assessment is made as an entirety by the Revenue Commissioner and by him apportioned to the several counties and municipalities of the State. The Boards of County Commissioners
22 and the Chairmen of the County Commissioners and the Mayor of each incorporated city and town do not make the assessment and are not empowered to change the same. They are required by law to assess against this railroad on the proportion of said invalid assessment so certified to it or him the tax imposed for county, township, city or other tax district purposes and levied on other property.

Unless the tax collecting officers of the several counties and municipalities are restrained, they will proceed under the law to collect the tax on the illegal assessment, which tax becomes due on the first Monday in October. Under the law of North Carolina, the taxes so assessed in behalf of the State, counties, towns and cities, if not paid, will under the Statutes of North Carolina become a first lien upon the property of the plaintiff in North Carolina and will be a cloud upon the title to said property, and if said taxes are not paid as assessed, the penalties as provided by law will attach and its property will be sold for the taxes, all to the great damage of plaintiff for which it has no adequate remedy at law.

Prayer.

Wherefore, and for as much as plaintiff is remediless in the premises, according to the common law, and remediable only in equity, and that plaintiff may not be subjected to a multiplicity of suits which would otherwise develop, and may not suffer irreparable in-

jury and damage, and may be permitted to pursue and carry
23 on its business without unlawful hindrance and destruction,
and that the railroad by plaintiff operated in the State of North Carolina as aforesaid and its other property herein may not be subjected to illegal liens and clouds, plaintiff prays for a writ of subpœna to issue against the defendants and each and every one of them named and described as aforesaid, to appear and full and true answer make to this bill of complaint, and that said defendant A. D. Watts state in his answer the method whereby he reached the so-called final assessment, but not under oath, answer under oath being hereby waived, and that said defendants, and each and every one of them, be enjoined by final decree and, meanwhile, by a preliminary injunction as follows, to wit:

That said A. D. Watts, as the Commissioner of Revenue of North Carolina, be enjoined and restrained from certifying to the State Auditor the said illegal ad valorem assessment as the value upon which shall be calculated the amount of taxes which plaintiff shall pay as a franchise or privilege tax.

That Baxter Durham, as Auditor of North Carolina, be enjoined and restrained from charging to plaintiff for collection and that Benjamin R. Lacy, as State Treasurer, be enjoined and restrained from collecting from the plaintiff the franchise or privilege tax on the assessment herein complained of until the final order of this Court.

That James S. Manning, as Attorney General of North Carolina,
be enjoined and restrained from instituting or authorizing the
24 institution of any suit or proceedings to collect any tax based
upon said illegal assessment until the final order of this Court.

That each of the defendant sheriffs aforesaid of the respective counties be enjoined and restrained from collecting or taking any steps to collect from plaintiff upon the proportion of said assessment apportioned to and certified by the Revenue Commissioner as being apportioned to his county, any and all taxes levied thereon for county, township, or other taxing district purpose until the final order of this court.

That each of the defendant city or incorporated town Tax Collectors of the respective cities and towns aforesaid be enjoined and restrained from collecting or taking any steps to collect from plaintiff upon the proportion of said assessment apportioned to and certified by the Revenue Commissioner to the respective Mayors of said cities and towns as being apportioned to his respective city or town, any and all taxes levied thereon for city, town, or other municipal purpose until the final order of this court.

That on final hearing the Revenue Commissioner be enjoined and commanded to cancel the illegal assessment aforesaid and to withdraw from the several Chairmen of the County Commissioners and the Mayors of each city or incorporated town to which certificate of a proportion thereof has been made and from all others to whom cer-
tificate thereof has been made, the certificate thereof so made.
25 Plaintiff further prays that the tax statutes of North Carolina herein alleged to be unlawful be decreed by this Court to be unconstitutional and invalid, and that no assessment for tax-

ation be made against plaintiff thereunder, and no tax be levied against or collected from plaintiff thereunder; and for all such other, further, general, and special relief as in equity it may be entitled to.

This is the first application for injunction in this cause.

S. R. PRINCE,
Solicitor for Plaintiff.

L. E. JEFFRIES,
MANLY, HENDREN & WOMBLE,
WILSON & FRAZIER,
Of Counsel.

DISTRICT OF COLUMBIA,
City of Washington:

F. S. Wynn, being duly sworn, deposes and says that he is Vice-President of Atlantic and Yadkin Railway Company, the above-named plaintiff, which is a corporation; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

F. S. WYNN.

Subscribed and sworn to before me this — day of ——, 1921.

HARRY K. PIMPER,
Notary Public, District of Columbia.

26 *Application for Interlocutory Injunction.*

Filed Sept. 30, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Comes the above-named plaintiff and shows the Court:

That it has instituted in this Court by bill of complaint an action against A. D. Watts, as Commissioner of Revenue of the State of North Carolina, and other defendants as shown in said bill which is now referred to and made a part of this application, the object and purpose of the action being to secure from this Honorable Court an order enjoining preliminarily and perpetually the defendants, who

are tax assessing, collecting, and enforcing officers of the State of North Carolina and its municipal subdivisions, from collecting or instituting proceedings to collect State, county, municipal, or other taxes levied upon or based upon an illegal overassessment of plaintiff's property, made and certified to them by the Revenue Commissioner of North Carolina, which assessment is contrary to the Constitution and laws of North Carolina and the Constitution of the United States. The bill alleges and set forth the grounds
27 of unconstitutionality of the assessment and of the statutes of North Carolina under which said invalid assessment was made and under which the illegal taxes will be collected by the defendants named in said bill unless restrained by this Honorable Court, all of which is more fully alleged, set out, and explained in the bill of complaint filed herein.

Plaintiff alleges that the franchise tax levied under Section 82 of the Revenue Act of North Carolina, ratified March 8, 1921, is unconstitutional and that no tax can be levied thereon under any assessment, and the action of the State's tax collecting officer in the execution of said void statute is sought to be enjoined. Said tax is due and payable on or before the 15th day of October, 1921, and if not paid by December 1, 1921, a penalty of ten per cent (10%) is added to such tax.

The ad valorem taxes levied by the counties on said illegal assessment is due on the first Monday in October, and unless paid, the Sheriff may levy and sell property of this plaintiff after November 1, 1921.

The municipal and other taxes levied upon said illegal assessment will become due and the collection thereof will be undertaken prior to the determination of this cause unless the tax collecting officers are restrained.

Wherefore, application is made under Section 266 of the Judicial Code for an interlocutory injunction as prayed for in said bill, and this Court is petitioned to call to his assistance to hear and
28 determine this application two other judges, and that the statutory notice of the hearing of this application be given the Governor and the Attorney General of the State of North Carolina and each of the defendants to the said bill, and an order issue requiring the defendants to show cause at the time and place to be fixed by this Court according to law why said interlocutory injunction should not issue as prayed for.

This application is based upon the verified bill of complaint on file herein.

S. R. PRINCE,
Attorney for Plaintiff.

29 *Order for District Judge on Application for Interlocutory Injunction.*

Filed Sept. 30, 1921.

In Equity.

No. —.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The application for an interlocutory injunction was presented to me this — day of —, 1921; and having read and considered the verified bill filed in this cause, and the application for a hearing for interlocutory injunction under Section 266 of the Judicial Code, and being advised that for the reasons set forth in said application and upon the grounds stated therein and in the verified bill, plaintiff is entitled to have its application heard under Section 266 of the Judicial Code:

It is ordered, that the application be filed and a hearing of the application for an interlocutory injunction be had and proceeded with in accordance with Section 266 of the Judicial Code as amended by Act of Congress approved March 14, 1913, and such hearing is set down for October 6, 1921, at the United States Court rooms in the city of Greensboro, North Carolina, at 11 o'clock A. M.

It is further ordered, that notice of said hearing, not less than five days, shall be given to the Governor and the Attorney General of the State of North Carolina, and to each of the defendants
30 to this suit. And I hereby call to my assistance at said hearing of said application the Honorable Edmund Waddill, Circuit Judge of this Circuit, and the Honorable Henry G. Connor, District Judge of the Eastern District of North Carolina.

This Sept. 30", 1921, at Greensboro, North Carolina.

JAS. E. BOYD,
District Judge.

31 *Notice of Hearing of Application for Interlocutory Injunction under Judicial Code, Section 266.*

Filed Sept. 30, 1921.

In Equity.

No. —.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

To Honorable Cameron Morrison, Governor of the State of North Carolina; Honorable James S. Manning, Attorney General of the State of North Carolina; Honorable A. D. Watts, Revenue Commissioner of the State of North Carolina: Honorable Baxter Durham, Auditor of the State of North Carolina; Honorable Benjamin R. Lacey, Treasurer of the State of North Carolina: and to each of the defendants named in the above bill:

You, and each of you, are hereby notified that the Atlantic & Yadkin Railway Company, plaintiff, has filed its verified bill of complaint in the District Court of the United States for the Western District of North Carolina against A. D. Watts, Revenue Commissioner, et al., praying an injunction against the named tax assessing, collecting and enforcing officers of the State of North Carolina and its municipal subdivisions from collecting or instituting proceedings to collect State, county municipal or other taxes levied upon
32 or based upon the alleged illegal overassessment of plaintiff's property for the year 1921, made and certified to by the Revenue Commissioner of the State of North Carolina, and also praying that certain tax laws of North Carolina be declared unconstitutional, as will appear from the bill filed herein.

In this cause plaintiff has made application for an interlocutory injunction under Section 266 of the Judicial Code of the United States. The application for such interlocutory injunction will be heard in the United States District Court, in the city of Greensboro, North Carolina, on the 6th day of October, 1921, at 11 o'clock A. M., and you, and each of you, are notified to appear at said time and place and show cause, if any, why the interlocutory injunction prayed for should not be granted.

Done in open court this 30″ day of Sept., 1921.

JAS. E. BOYD,
Judge.

33 *Subpœna.*

Issued Sept. 30, 1921.

UNITED STATES OF AMERICA,
Western District of North Carolina, ss:

The President of the United States of America, to —— ——, Greeting:

You are hereby commanded to appear before our District Court of the United States of America for the Western District of North Carolina, at Greensboro in said District, within twenty days after the service of this subpœna upon you, exclusive of the day of such service, to answer the bill of complaint of the Atlantic & Yadkin Railway Company this day filed in the Clerk's Office of said Court in Greensboro, North Carolina, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

For the Marshal of the United States for the Western District of North Carolina to execute.

Witness the Honorable James E. Boyd, Judge of the District Court of the United States of America for the Western District of North Carolina, and the seal of said court hereunto affixed.

Issued at Greensboro in said District, this 30 day of Sept. 1921.

[SEAL.] R. L. BLAYLOCK,
Clerk.

34 *Motion to Dismiss Bill.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILROAD COMPANY, Plaintiff,

vs.

A. D. WATTS et al., Defendant.

Motion.

Come now the defendants A. D. Watts and others named as defendants in the complaint filed in this suit, and move the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss this suit, because it is conceded in the complaint that the plaintiff owes and is liable to pay the defendants' taxes

on property situated within the State of North Carolina and in the several counties named in the complaint and in the several cities, towns and taxing districts named in the complaint property of the value of $2,690,349.00, on which said property the plaintiff, as it appears in its said complaint has not paid or tendered payment of the taxes due thereon.

JAMES S. MANNING,
Attorney General of N. C.;
FRANK NASH,
Asst. Attorney General,
Solicitors of the Defendants.

GEO. H. BROWN,
LOCKE CRAIG,
WM. P. BYNUM,
KING, SAPP & KING,
Of Counsel.

35 *Order Denying Motion to Dismiss.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The defendants this date moved the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss the suit upon the grounds stated in said motion.

Upon consideration thereof, the Court denies the motion to dismiss the suit.

In appearing to the Court that the application for a preliminary injunction has been continued by agreement of parties, which agreement has been filed in this cause, and it further appearing that by said stipulation the plaintiff agrees to pay the taxes which may come due as they come due to the counties, cities, towns, and other taxing districts of the State of North Carolina on the valuation stated in the stipulation filed herein this date.

EDMUND WADDILL, JR.,
U. S. Circuit Judge.
JAS. E. BOYD,
H. G. CONNOR,
U. S. District Judge.

36 *Order Allowing Motion for Leave to Amend Complaint by Adding Thereto Sec. 12½, and Amendment.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY CO.

vs.

A. D. WATTS and A. D. WATT, as Commissioner of Revenue, et al.

The plaintiff this date moved the Court for leave to amend the complaint herein by adding thereto Section 12½, on page 33 of the bill. Upon consideration thereof, it is ordered that the motion be allowed and the amendment be filed.

JAS. E. BOYD,
Judge.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY CO.

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Comes, the plaintiff and shows to the Court that since the filing of its bill in this cause on the 30th day of September 1921. Honorable Baxter Durham, State Auditor, under date of Sept. 22nd, certified to plaintiff, which certification was received on September 24th 1921, the so-called franchise or privilege tax assessed under the provisions of Section 82 (6½) of the Revenue Laws, Chapter 34, North Carolina Public Laws of 1921, demanding payment of the aggregate amount of $4,104.71, this sum being one-tenth of one per cent
37 on the aggregate assessed valuation for ad valorem purposes of $4,104,709.00, as fixed for the year 1921 by the Commissioner of Revenue.

Wherefore, plaintiff moves the Court to enter an order permitting plaintiff to amend its complaint by adding thereto the following Section 12½, on page 21, of said complaint.

"12½. Plaintiff further shows that even if the said so-called franchise tax of one-tenth of one per cent is not illegal and void as a franchise tax but should be decided by the Court to be a valid tax, nevertheless plaintiff is entitled to the relief prayed because the State Auditor has demanded of plaintiff as a franchise tax for the year 1921 the sum of $4,104.71, which is one-tenth of one per cent of the aggregate assessed valuation of plaintiff of $4,104,709.00, fixed for the year 1921 by the Commissioner of Revenue for ad valorem purposes, whereas under the provisions of Sec. 82 (3½) of the Revenue Act of North Carolina of 1921 plaintiff should be required to pay only upon one-half of such value for the reason that the proportion of the capital stock of plaintiff, a domestic corporation, reported to North Carolina is less than one-half of the assessed value for taxation of all the property of plaintiff in North Carolina for the year 1921. This demand made by the State Auditor of the plaintiff if enforced denies to plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and violates the Uniformity Clause of Section 3, Article 5, of the Constitution of North Carolina. And plaintiff prays the Court, if the said so-called franchise tax should be held valid, to decree that plaintiff's franchise tax shall be calculated with reference to the sum of one-half of the total assessed value of all the property of plaintiff in North Carolina." S. R. PRINCE,
Solicitor for Plaintiff.

As Counsel for defendants, consent is given to the above amendment, and this may be taken as acceptance of service of the amendment. WM. P. BYNUM,
Counsel for Defendants.

38 *Amendment Substituting E. A. Brady, Tax Collector, in Place of J. R. Steele.*

Filed Octo. 10, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY COMPANY
vs.
A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Comes the plaintiff and moves the Court to enter an order permitting plaintiff to amend its complaint filed in this cause in the following particular:

That J. R. Steele, one of the defendants, sued as Tax Collector of the Town of Ramseur, North Carolina, be stricken as defendant

and that E. A. Brady, the present Tax Collector of Ramseur be substituted as defendant.

S. R. PRINCE,
Solicitor for Plaintiff.

As Counsel for defendants, consent is given to the above amendment, and this may be taken as acceptance of service of the amendment.

WM. P. BYNUM,
Counsel for Defendants.

The above motion for leave to amend is granted, and it is ordered that the amendment be filed.

JAS. E. BOYD, *Judge.*

39 *Consent Decree.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY CO.

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The following stipulation is entered into between counsel for Plaintiff and the Attorney General of North Carolina and his associates as counsel for all defendants, for each of which defendants they have entered an appearance;

It is agreed that in order that the defendants may have sufficient time in which to prepare the defense, the application for an interlocutory injunction under Section 266 of the Judicial Code is, with the consent of Court, continued until such date as the Court may select following January 1, 1922.

The foregoing continuance being agreed upon and it appearing that before the hearing and determination of the application certain taxes will come due to the State of North Carolina and to the counties, cities, towns and other taxing districts; Therefore it is agreed by the Attorney General of North Carolina and his associates as representing all of the defendants, that if the Atlantic & Yad. Railway Co. pays the taxes it agrees hereinafter to pay, then no further or other taxes sought to be enjoined in the bill will be demanded or collected or any action or suit of any character begun to collect or any penalty assessed for the non-payment thereof, until the further order of the Court or pending this action.

The Atlantic & Yadkin Railway Co. agrees that it will pay when due in accordance with the laws of the State of North Carolina to all counties, cities or towns, special school districts, or other special taxing districts all taxes that may be due such county, city, special school or other special taxing districts of the State, on its proper proportionate share of an aggregate ad valorem assessment against plaintiff of $1,975,806.00.

The Attorney General of North Carolina agrees that he will take all necessary action to have the Commissioner of Revenue certify to the several counties and taxing districts of North Carolina their proper proportion of an assessment of $1,975,806.00, as soon after the date hereof as may be practicable and, if possible, within such period as will enable the Railway Company to take advantage of any discount that it may be entitled to under the law.

It is agreed between the parties that the Atlantic & Yadkin Railway Co. is not to demand a receipt in full for its 1921 taxes in consideration of the payment it makes, but is to receive a receipt for the amount of the taxes paid, and the amount of taxes so paid shall be in full of said taxes due if an assessment shall be finally fixed at a sum not in excess of $1,975,806.00, or such payment shall be a credit upon all taxes that may be due if the assessment of plaintiff's property for ad valorem tax purposes for the year 1921 shall be finally fixed in excess of said $1,975,806.00.

It is further agreed that if defendants desire to file an answer prior to the hearing of the application for an interlocutory injunction they shall file such answer or any motion or other pleading they desire to file by December 1, 1921, and furnish opposing Counsel with copies thereof, Plaintiff shall have until December 24th 1921, to file any motion or reply pleading and any affidavits in support of bill or motion for interlocutory injunction or in reply and furnish opposing Counsel with copies thereof. Defendants shall have until January 10, 1922, to file affidavits in support of their answer or in reply and plaintiff shall have until hearing to file reply affidavits.

This stipulation to become effective and filed in this Court upon approval hereof by the Court.

At Greensboro, N. C., this 6th day of October 1921.

S. R. PRINCE,
MANLY, HENDREN & WOMBLE,
A. B. ANDREWS,
Attys. for Plaintiff.
JAS. S. MANNING,
Attorney General of No. Ca.;
GEO. H BROWN,
WM. P BYNUM,
KING, SAPP & KING,
Counsel for Defendants.

Approved Octo. 6, 1921.
EDMUND WADDILL, JR.,
U. S. Circuit Judge.
JAS. E. BOYD,
H. G. CONNOR,
U. S. District Judges.

40½ In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 262.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

Answer.

James S. Manning,
Attorney-General;
Frank Nash,
Assistant Attorney-General,
Solicitors for the Defendants.

W. P. Bynum,
George H. Brown,
Locke Craig,
Thomas D. Warren,
Sidney S. Alderman,
Of Counsel.

41 *Answer.*

Filed Nov. 30, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY

against

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et als.

Answer.

Come now A. D. Watts and the other defendants in the above-entitled suit and, answering the complaint filed by the plaintiff therein, say:

1. The allegations of article one are admitted, except the allegation that the plaintiff is not a citizen of the State of North Carolina, which is denied; on the contrary it is averred that the plaintiff was at all times mentioned in the complaint, and is now, a corporation duly

created and existing under and by virtue of the laws of North Carolina, and by said laws was consolidated with the corporations of North Carolina and Virginia hereinafter mentioned, and is a citizen of North Carolina and of the Eastern District thereof, with its principal place of business at Wilmington in said State.

The plaintiff company was consolidated with the Wilmington and Weldon Railroad Company, Petersburg Railroad Company, and other companies chartered under laws of North Carolina, said consolidation being had under the general authority of this State as follows, Chapter 294 of the Private Laws of 1893, which act contained this proviso: "Provided, that this act shall not have the effect of ousting the jurisdiction of the courts of this State over causes of action arising within the State;" Chapter 105, Private Laws 1899, which contained these provisions:

42 Provided, further, that any and all corporations consolidated, leased or organized under the provisions of this act shall be domestic corporations of North Carolina and shall be subject to the laws and jurisdiction thereof.

"Sec. 2. That authority is hereby given to the said Wilmington and Weldon Railroad Company at any meeting of its stockholders, by a majority vote thereof, to change its name to the Atlantic Coast Line Railroad Company of North Carolina."

At the same session of the Legislature, Chapter 77, Public Laws of 1899, the following statute was enacted:

An act to ratify the consolidation of the Petersburg Railroad Company with the Richmond and Petersburg Railroad Company, under the name of the Atlantic Coast Line Railroad Company of Virginia, and to incorporate the said Atlantic Coast Line Railroad Company of Virginia in North Carolina.

Whereas the Richmond and Petersburg Railroad Company, a corporation created by the laws of the State of Virginia, has, by virtue of the power given by an act of the General Assembly of Viginia, approved March the first, eighteen hundred and ninety-eight, acquired the ownership of all the property, rights, and franchises of the Petersburg Railroad Company, including that portion thereof which is located in this State, and the said Richmond and Petersburg Railroad Company and Petersburg Railroad Company have become consolidated under and upon the terms of said act, and such consolidated company has, by virtue of the authority given in said act, changed its name to the Atlantic Coast Line Railroad Company of Virginia: now, therefore,

The General Assembly of North Carolina do enact:

Section 1. That the purchase by the said Richmond and Petersburg Railroad Company of that portion of the roadbed and other property, rights and franchises of the Petersburg Railroad Company which are in the State of North Carolina, is hereby ratified and approved.

43 Sec. 2. That the Atlantic Coast Line Railroad Company of Virginia, a corporation created by and existing under the laws of the State of Virginia, is hereby created a body politic and corporate in the State of North Carolina under and by the aforesaid name of the Atlantic Coast Line Railroad Company of Virginia, and by such name may sue and be sued, may adopt a common seal and change the same at will, and have all the general powers and be subject to all the general restrictions granted and imposed by the laws of this State to and upon railroad companies.

Sec. 3. The said Atlantic Coast Line Railroad Company of Virginia is hereby authorized and empowered to maintain and operate the railroad which formerly belonged to the Petersburg Railroad Company in this State, and is hereby given all the rights, powers, and privileges, and made subject to all the restrictions, except the restriction as to the term to which its charter is limited, granted and imposed by the charter of the said Petersburg Railroad Company or any amendments thereto in the State of North Carolina.

Sec. 4. The powers given by this act to the Atlantic Coast Line Railroad Company of Virginia are granted upon the express condition that the property of the said Atlantic Coast Line Railroad Company of Virginia in this State shall always be liable to taxation under the Constitution and laws of this State, and that said company shall be subject to the tariffs, rules and regulations prescribed by the Board of Railroad Commissioners.

Sec. 5. This act shall be in force from and after its ratification.

The plaintiff accepted the benefits conferred upon it by the private acts above referred to, and also those contained in the above-quoted act of 1899, the railroads in North Carolina permitted by the General Assembly to consolidate with it having become under these acts a part of its system, and thus absorbed by it; and said plaintiff cannot now be heard to say that it is not bound by the restrictive provisions while it holds to the benefits conferred by those acts.

Since the enactment of the statutes above mentioned and the acceptance by the plaintiff of the benefits thereunder, it has
44 been uniformly held by the Supreme Court of North Carolina to be a corporation of this State.

The allegations of article one as to the mileage of the plaintiff in this State is admitted, except that the allegation therein that the mileage of railroad owned, operated, leased and controlled by the plaintiff in North Carolina is 1,043.79 miles is true only as to the first main lines of the plaintiff's roads in this State and does not include the mileage of second main lines and sidetracks, which, added to the mileage of the first main lines, increase the mileage of lines of railroad owned, operated, leased and controlled by the plaintiff in this State to 1,419.65 miles instead of 1,043.79 miles. Nor does this latter figure include the so-called independent lines returned and reported by the plaintiff to the Revenue Commissioner as required by law, all or a majority of the stock of which is owned by the plaintiff, thus giving it absolute control of those lines also. The mileage of these last named lines is 199.76 miles, which, added to

the mileage of the other lines, makes a total mileage of railroad owned, operated, leased and controlled by the plaintiff in North Carolina of 1,619.41 miles. The plaintiff has a double track on its main line running from Richmond, Virginia, through the State of North Carolina to Florence, South Carolina.

2. The allegations of article two are admitted, but the name of the defendant Watts is Alston D. instead of Augustus D., as alleged.

3. The allegations of article three are denied, except it is admitted that this is a suit in equity, and that the amount in controversy, exclusive of interest and costs, exceeds the sum and value of three thousand dollars.

4. The allegations of article four are admitted.

5. The allegations of article five and the subsections thereof are admitted, except as hereinafter stated.

Section 64 of the Machinery Act of 1921, referred to in subsection (*e*) of article five, did not make it the duty of the Commissioner of Revenue to do the things therein stated, but made it the duty of the State Tax Commission. Subsequently, there was enacted a separate statute, ratified March 8, 1921, being Public Laws, Session 1921, page 388, whereby the powers and duties of the State Tax Commission were transferred to and imposed upon a newly created officer to be called the Commissioner of Revenue. That statute, however, and the said Section 64 of the Machinery Act of 1921, of which it was amendatory, did not require the Commissioner of Revenue to assess the properties of railroads for taxation for the year 1921 or for any year thereafter until 1924. The State Tax Commission had made the assessment of railroad properties in North Carolina for taxation for 1920, and the said assessment had been approved by the General Assembly of North Carolina in its Extra Session of 1920, Public Laws 1920, Chapter 1, and adopted as the basis for taxation for the years 1920 to 1923, inclusive. The only power with reference to assessments of railroad properties prior to 1924, given to the Commissioner of Revenue by the Public Laws of 1921, was the power to review the State Tax Commission's assessment of railroad properties, given by the Machinery Act of 1921, Section 28 (*g*).

The said section 65 of the Machinery Act referred to, and the proviso thereof quoted in subsection (*f*) of article three of the complaint, is the statute particularly controlling the assessment for taxation of the properties of railroads doing interstate commerce, operating both within and without the State.

Section 82 (6½) of the Revenue Act of 1921, referred to and quoted in subsection (*g*) of article three of the complaint, was first enacted by the General Assembly in the Extra Session of 1920, Public Laws 1920, Chapter 1, Section 7 (*d*), and was carried forward without change in the said Revenue Act of 1921. The said Section

82 (6½) was a substitute for Sections 77 and 78 of the Rev-
46 enue Act of 1919, which imposed a privilege tax on railroads for the privilege of doing intrastate commerce within North Carolina, based on gross earnings per mile within the State. This tax levied by the said Sections 77 and 78 of the Revenue Act of 1919 had existed in the laws of North Carolina for many years, in addition to ad valorem taxation. The said Section 82 (6½) substituted for the old privilege tax based on gross earnings per mile a new form of privilege or franchise tax upon all railroads, for the privilege of doing intrastate business within North Carolina, based on the total properties of each said railroad within the State as assessed under the Machinery Act for ad valorem property taxation.

It is admitted that Section 82 (3½) of the Revenue Act of 1921 is as quoted in subsection (*h*) of article five of the complaint, but it is denied that the same has any application to railroad corporations. It applies only to those corporations upon which are levied the special privilege tax based on capital stock provided for in Section 82, Subsections 1, 2, 3, 4, 5, 6, 7, 8, and 9, and has no application to the franchise or privilege tax on railroads provided for by Section 82 (6½), as hereinafter alleged.

The allegations of subsection (*h*) of article five, as to income tax against railroads, are admitted; but it is alleged that the said income tax is not only levied upon railroads, but is also levied in the same way upon all corporations doing business in North Carolina, foreign and domestic, railroad corporations and others, equally and without discrimination.

6. The allegations of article six are admitted.

7. The allegations of article seven are admitted.

8. The allegations of article eight are admitted, but the defendants aver that the plaintiff had no legal grounds for making such protest. Its taxes paid in North Carolina in 1920 were actually less by more than one-third than those paid in by it in 1919
47 before the revaluation and reassessment were made, the amount of the taxes paid by the plaintiff for all purposes to the State, counties, cities and towns in North Carolina being for the year 1919, $680,811.89, while for the year 1920 they were only $489,686.79.

9. The allegations of article nine are admitted, except as to the name of Commissioner of Revenue, which is Alston D. Watts instead of Augustus D. Watts.

10. The allegations of article ten are admitted.

11. The allegations of article eleven are admitted; but the defendants aver that the action of county boards of review referred to applied only to real property in general, including real property of railroads and of the plaintiff laying off the right of way, but not to their roadbed and other property used in their daily operation.

12. Defendants are informed and believe that the allegations of article twelve are true.

13. The defendants are informed and believe that the allegations of article thirteen are true.

14. The defendants are informed and believe that the allegations of article fourteen are true.

15. The defendants are informed and believe that the allegations of article fifteen are true.

16. Answering the allegations of article sixteen, the defendants deny that the Commissioner of Revenue made any assessment of the property of the plaintiff in North Carolina for 1921. It is admitted that by an addition to the assessment of strictly railroad properties of the plaintiff made by the State Tax Commission in 1920 of values assessed by local assessors on properties of the plaintiff lying off the right of way, the total assessment of the properties of the plaintiff, both the apportionable railroad properties and the properties off the right of way locally assessed, was fixed at $51,163,717 and that that figure is in excess of the total assessment for 1920, $50,867,800, by the amount of $296,917. It is admitted that the figure of $51,163,717 for 1921 is erroneous to the extent of
48 $295,917, and should be corrected by the deduction from it of that amount so erroneously included in the assessment of apportionable railroad properties.

This error arose from the fact that in 1920 in the returns made by the plaintiff to the State Tax Commission and upon which the State Tax Commission assessed the plaintiff's railroad property, the plaintiff itself, through confusion or misunderstanding, included certain items of property in Edgecombe and New Hanover counties which were properties lying off the right of way, not railroad property, and which therefore should have been assessed by local assessors. These properties increased the amount of the assessment of the plaintiff's railroad properties apportionable to the counties through which the plaintiff's railroad runs. In 1921 these local properties were also assessed by local assessors. The Revenue Commissioner brought forward for 1921 the assessment of plaintiff's railroad properties as the same was made by the State Tax Commission for 1920, which assessment as hereinbefore stated contained also these items of local property. The result was that these properties were assessed twice, locally and as a part of the assessment of railroad property, for the year 1921, and this amount of $295,917 should therefore be deducted from the total assessment of plaintiff's railroad properties apportionable to counties.

This error or confusion for 1921 was only called to the attention of the Commissioner of Revenue a short time before this suit was instituted, and it was agreed by the office of the Commissioner of Revenue that it should be corrected or adjusted in this litigation.

17. The allegations of article seventeen are denied, except that the Commissioner did give the plaintiff a hearing as alleged. The

defendants aver that the Commissioner of Revenue gave to the plaintiff the benefit of the same percentage of reduction allowed in the respective counties to other persons and corporations upon
49 all of the real property of the plaintiff lying off its right of way and not used by it in its daily operations for purposes of transportation, except as to certain errors or confusions caused by plaintiff's returns hereinafter referred to.

It is admitted that a hearing was had before the Commissioner of Revenue August 16, 1921; but it is denied that facts were adduced before him showing that the assessment of plaintiff's properties in North Carolina for taxation was unfair or discriminatory; that it would be taking the property of the plaintiff without due process of law, or that it would be denying to the plaintiff the equal protection of the law, or that it was not uniform, or that it was not made in accordance with Chapter 38 of the Public Laws of 1921, or that it should be reduced in order to equalize the value of the plaintiff's property with that of other persons and corporations assessed for taxes for the year 1921 under the laws of North Carolina; and it is further denied that such facts existed.

Further answering article seventeen, the defendants aver that the Revaluation Act, Public Laws of 1919, Chapter 84, was passed by the General Assembly of North Carolina for the purpose of making the tax laws of the State accord with Section 3 of Article V of the Constitution of North Carolina by making the ascertainment of the true value in money of all property in the State the basis of assessment for taxation. This law provided for a complete revaluation of all property, real, personal, and mixed, by local appraisers in the county, and of railroad properties by the State Tax Commission, this new valuation to be used as the basis for computing the ad valorem taxes for the years 1920 to 1923, inclusive, when the same should be approved and the tax rates for the State revised by the General Assembly, and when the tax rates levied by the counties, cities, towns, and special-tax districts should be revised under rules to be laid down by the General Assembly.

The general revaluation of all property in the State was
50 made pursuant to this act. Real estate in general in the State was raised about two hundred per cent in value above the assessments for 1919. Railroad properties in the State were raised by the State Tax Commission under the provisions of the said Revaluation Act only about one hundred per cent above the 1919 assessments. The said revaluation and assessments were thereupon approved and adopted by the General Assembly in the Extra Session of 1920 (August), by Public Laws of 1920, Chapter 1, called the Revenue Act of 1920. By this statute the General Assembly adopted the revaluation assessment as the basis for the levy of taxes for the years 1920 to 1923, inclusive. This act, furthermore, revised the tax rates of the State and authorized and made the rules for the revision of tax rates by counties, cities, towns, and special-tax districts, which revisions were actually made.

The defendants aver that the revaluation had been made at a time when farm products, farm land, and real estate in general were

bringing in the market abnormally high prices which at the time were thought to be stable. A sharp period of depression affecting particularly the values of such real estate and products followed almost immediately after the said reassessment under the Revaluation Act and much real property fell in market value below the value at which it had been assessed under the revaluation. It is denied, however, that the 1920 assessment of railroad properties in the State under the Revaluation Act was made at a time when such property was abnormally high, as other property was, and it is denied that any such depression in the market values of railroad system properties followed the said revaluation.

As a result of the condition above described as applied to farm lands and other real estate, there was enacted in the Machinery Act of 1921, Section 28 (*a*) thereof, as quoted in article ten of the complaint, which provided that county boards of commissioners
51 and county boards of appraisers and review, appointed under the Revaluation Act, should sit together jointly as county boards of review to determine if the valuation of real estate in the counties as a whole, as made under the Revaluation Act, was in excess of the fair value of such property at the time of meeting of the said boards of review. It provided that if it should be found that the assessments of real estate were thus excessive, the boards of review should find the average percentage of excess for their respective counties and report the same to the State Tax Commission. It provided that the valuation as assessed under the Revaluation Act and as reduced by this average percentage of reduction should be the value at which property should be assessed for taxation unless and until changed by the State Tax Commission.

The county boards of review in sixty-seven counties in the State, after due consideration, decided to make reductions and report the same to the State Board of Equalization, pursuant to these provisions. The assessments of value which had been made under the Revaluation Act were reduced by these percentages and the resulting assessments became the assessments for taxation in those counties. Plaintiff's properties lying off the right of way, and which, therefore, were assessed by local assessors as other real estate, and by them reported to the State Board of Equalization, were reduced proportionately along with all other real property in those counties in which such property of the plaintiff was situated and such reductions were allowed, except as to the confusions hereinbefore referred to.

Inasmuch as real property in general had been raised by the revaluation assessment to three times the former assessment, and the assessment of railroad properties by the State Tax Commission had been raised to only twice the former assessment; and inasmuch, therefore, as the assessments of real property in general for 1920 were in excess of their true market value, in 1921, and the assess-
52 ments of railroad properties for 1920 were not in excess of, but were at, their true value for 1921, the Commissioner of Revenue properly refused to make reductions of the said assessment of strictly railroad system property of the plaintiff to correspond with

the cuts made by the county boards of review on real property in general.

It is denied that the failure of the Commissioner of Revenue to apply the said reductions to the assessment of plaintiff's railroad property was in any way a discrimination against the plaintiff. It is denied that the causes which brought about a reduction in the market value of real estate in general in the counties in which a reduction was made applied to the plaintiff's railroad property, and it is denied that plaintiff's railroad system property, tangible or intangible, was reduced in value as was real estate in general.

The fall in value of real estate in 1920 and 1921 was due primarily to a radical decline in the price of farm products. Tobacco, cotton, and other large products of North Carolina dropped to phenominally low prices, and the values of farm lands and other real estate, and the rentals therefrom, declined sharply with the said decline of prices. Railroads, however, were not so affected. The same volume of crops was moved by the railroads, although the farmers received greatly reduced prices therefor, and, instead of the prices charged by railroads for their services being reduced, the railroads were actually allowed an increase of twenty-five per cent in freight rates and twenty per cent in passenger rates. It is, therefore, denied that the plaintiff should have been given or was entitled to the benefit of any reduction on the assessment of its railroad system property by reason of a decline in value of farm lands and other real property in general, which decline did not apply to railroad property.

It is denied that the values of the plaintiff's railroad properties depend upon the fluctuating values of other property in the State as affected by temporary advances and declines. It is denied
53 that the business of the plaintiff fluctuates directly or in any corresponding proportion with the values of farm lands, or other real property, or with the prosperity of the State it serves for any one year or temporary period of time. It is denied that the plaintiff's property has declined in value since 1920.

18. Answering the allegations of article eighteen, the defendants deny that there was any injustice, unfairness, or discrimination practiced by the Commissioner of Revenue or that any such injustice, unfairness, or discrimination existed in the assessing of the plaintiff's property. The total assessed valuation of real property in Edgecombe County for 1919 was $7,867,565. That assessment was raised under the Revaluation Act to $34,955,056 for 1920. The total assessed value of real estate for Nash County for 1919 was $7,865,680. That assessment was raised under the Revaluation Act to $36,300,096 for 1920. It results that under the Revaluation Act the real properties in these two counties instanced by the plaintiff were raised about four hundred per cent. The defendants aver that subsequent events and the sharp decline in 1921 proved that this increase under the Revaluation Act was excessive. The horizontal reduction of only fifty per cent was then applied to bring the 1920 assessment of the said properties back to its true actual value for 1921. Railroad properties, however, including the plaintiff's, had

never been subjected to any such increase under the Revaluation Act. The plaintiff's total properties in North Carolina having been increased only from $34,645,345 for 1919 to $50,867,800 for 1920, and there is, therefore, no comparison to be drawn between the real estate in general and the plaintiff's railroad properties. It is denied that the plaintiff was entitled to any reduction on its assessment for 1920, and that the refusal of the Commissioner of Revenue to make any such reduction was in any way discriminatory or wrongful.

It is denied that the plaintiff, as the result of said assess-
54 ment for 1921, will pay to Nash or Edgecombe County, or to any other county, any unlawful or excessive tax.

The defendants attach hereto, as Exhibit "A" to this answer, a table showing the comparative assessments for 1919 and for 1920 in all counties in the State.

19. The provisions of Section 62 of the Machinery Act are admitted to be correctly quoted in article nineteen of the complaint.

It is admitted that property off the plaintiff's right of way is shown in returns both of the plaintiff and of local list-takers under the heading "Property outside of the right of way listed with the local list-takers." The defendants deny knowledge or information sufficient to form a belief as to whether the correct assessment of such property for 1920 was $1,677,178, and aver that the figure which the State Tax Commission ascertained from a checking of the confused and conflicting returns of the plaintiff and of local assessors was $1,301,637. There was confusion in the returns to the State Tax Commission and to the Commissioner of Revenue. The Commissioner of Revenue intends, and has always intended, in arriving at the total value of the property, tangible and intangible, of the plaintiff in the State assessed for ad valorem taxes, to allow as reductions therefrom all reductions made by local assessors under the Act of 1921 on property of the plaintiff lying off the right of way and assessed by local assessors, and as to any such reductions which have been made by local assessors and which have not been deducted from the said total ad valorem assessment upon which the franchise tax is based, he stands ready to make such correction at any time upon proper showing, and offered to make such correction shortly prior to the institution of this suit, and since its institution his office has proposed to the plaintiff that such corrections be made in the course of this litigation.

20. Section 62 (*a*) of the Machinery Act of 1921 is admitted to be correctly quoted in article twenty of the complaint.

55 It is admitted that the Commissioner of Revenue refused to allow any reductions from the value of the plaintiff's railroad property assessed by the State Tax Commission in 1920 to correspond with reductions made by county boards of review on land in general in the counties, and the defendants aver that there was no reason for making such reductions, as hereinbefore alleged, since railroad properties had not fallen in value as had other real property, reference being here made to article seventeen of this answer and to Exhibit "A" attached hereto.

As hereinbefore stated, if the Commissioner of Revenue has failed to allow any reductions made by local assessors on property of the plaintiff lying off the right of way and to apply the same to the total value of plaintiff's property, railroad property and that off the right of way, as assessed for ad valorem taxation, upon which value the franchise or privilege tax is based, he stands ready upon proper showing to make such reduction, and his failure heretofore to do so, if he has so failed, has been due to confusion of the returns made by plaintiff and the local assessors and not to any purpose to refuse to allow such reductions.

It is denied that the illustration given by the plaintiff as to reductions made in Rocky Mount and in Nash and Edgecombe counties on real property in general and on real property of the plaintiff lying off the right of way and assessed by local assessors furnishes any grounds for the plaintiff's argument that the failure of the Revenue Commissioner to allow corresponding reductions on plaintiff's strictly railroad property assessed by the State Tax Commission was discrimination. It is denied that it was discrimination or a denial to the plaintiff of the equal protection of the law or in violation of the Fourteenth Amendment to the Constitution of the United States, or of Section 3 of Article V or of Section 9 of Article 7 of the Constitution of North Carolina. Further answering the allegations of article twenty of the complaint, the defendants refer to article seventeen of this answer and ask that the same be considered as a part of this article.

56

21. Answering the allegations of article twenty-one of the complaint, the defendants deny that the Commissioner of Revenue has certified to the various counties, cities, and towns any valuation of the plaintiff's property in excess of that certified by the State Tax Commission in 1920. It is admitted, as hereinbefore stated, that there is some confusion in the returns of plaintiff and the assessors, and that some corrections should be made, and the Commissioner of Revenue is ready to make such corrections upon proper showing.

22. The allegations of article twenty-two are denied.

23. It is denied that the Commissioner of Revenue has refused to make any attempt to equalize the value of the plaintiff's property with the property of other persons and corporations. The defendants aver that the value of the plaintiff's property is equalized in that it is assessed for taxation at its true value in money as required by law. As to the allegation that there is no appeal under the laws of North Carolina from the assessment and valuation fixed by the Commissioner of Revenue, the defendants aver that the question of such right of the plaintiff to appeal from an assessment of its properties made by the Commissioner of Revenue never has arisen and cannot arise until the next assessment is made in 1924, since the Commissioner of Revenue has not now and has never had the power or duty to make an assessment of railroad property, but only to review the assessment already made by the State Tax Commissioner in and for the year 1920. The same law which gave other taxpayers the right to a review of the 1920 or revaluation assessment, gave railroads, in-

cluding the plaintiff, the right of review before the Commissioner of Revenue, which right of review was granted to the plaintiff.

The defendants further aver that the plaintiff is not without a right of appeal from action of the Commissioner of Revenue; that under the law and procedure of North Carolina the writ of certiorari would lie at the suit of the plaintiff to the said Commissioner of Revenue from the Superior Court of North Carolina, and that by this writ the plaintiff may at any time take up for review any proceedings by the Commissioner of Revenue whereby its legal and constitutional rights may be deemed to be violated. It is denied that anything in the laws of North Carolina constitutes a denial to the plaintiff of the equal protection of the law or a violation of the uniformity clause of the North Carolina Constitution.

57

24. The allegations of article twenty-four are denied.

25. The defendants deny knowledge or information sufficient to form a belief as to what the tax rate for 1921 will be in the said counties. If it be true, as alleged, that the assessment of the plaintiff's property remains practically the same, whereas the assessment of other property is reduced, that is because the value of the plaintiff's property has remained practically the same, whereas the value of other property either had been over-estimated for 1920 or has decreased since then. It is denied that the same causes which brought about a decrease in value of real estate in the counties in which the reduction was made applied to the plaintiff's railroad property, and it is denied that the decrease in value applies to the plaintiff's railroad properties as it does to real property in general. As hereinbefore alleged in article seventeen, the causes which decreased the values of land as land, did not apply to values of railroad property, and it is denied, therefore, that the reductions referred to were or were intended to be a general scheme of reductions due to general conditions applicable alike to railroad properties and to landed properties, and it is denied that the same should be applied to railroad properties and to the plaintiff's property in particular, as they were applied to real property in general. It is denied that the failure of the plaintiff to receive the benefit of such reductions to any greater extent than the same were actually applied to properties of the plaintiff lying off its right of way, is contrary to any part of the Constitution of North Carolina, or to the Constitution of the United States, or that it denies to the plainiff the equal protection of the law or takes its property without due process of law.

58

26. Section 65 of the Machinery Act of 1920 is admitted to be correctly quoted in article twenty-six, and the defendants aver that the said Section 65 and the proviso thereof, constitute the statute particularly controlling the assessment for taxation of the property of railroads doing interstate commerce and operating both within and without the State of North Carolina, such as the plaintiff's railroad.

27. It is denied that the method employed by the State Tax Commission, in arriving at the valuation of the plaintiff's property in North Carolina for the year 1920, was illegal or resulted in the over assessment of the plaintiff's property for taxation under the laws of North Carolina. It is denied that the Commissioner of Revenue unjustly or illegally refused to reduce the said assessment for the year 1921. It is denied that the State Tax Commission used the method of capitalization of the plaintiff's net income for North Carolina, exclusively, in arriving at the said assessment. As required by Section 64 of the Machinery Act, the State Tax Commission in 1920, in determining the value of the tangible and intangible property of the plaintiff for taxation gave due consideration to all those factors, modes and methods therein required to be considered. And as further required by Section 65 of the said Machinery Act, the State Tax Commission also gave due consideration to the character of the roadbed and fixed equipment of the plaintiff in North Carolina; to the number of miles of double track in the said State; to the amount of gross and net earnings per mile of road in the said State; and, to all other factors which would give a greater or less value per mile of road in this State than the average value for the plaintiff's entire system.

59 The State Tax Commission applied the foregoing methods and considered the foregoing factors in arriving at the assessment of the plaintiff's property, as it was required to do by law. It is denied that the method of capitalization of the plaintiff's net income in North Carolina was the exclusive method use by the State Tax Commission. That method was used merely as one consideration in connection with the other considerations as hereinbefore stated. In the application of that method, in so far as it was applied, it is admitted that the average net income of the plaintiff in North Carolina for the years 1915 to 1919, inclusive, was taken as a basis, and was obtained by deducting from the revenue allocated to North Carolina the average annual taxes paid in that State, and the average annual operating expenses allocated to that State. The defendants aver that the determination of the net income for the State of North Carolina is justly and fairly arrived at by that method. It is admitted that the allocation of operating expenses by the plaintiff to branches or divisions of the plaintiff's railroad and to states is not made with mathematical accuracy. The defendants aver that the allocation of operating revenues to any branch or division of the plaintiff's railroad or to any state is made with mathematical accuracy, and that the allocation of expenses, although it may not be mathematically accurate, is made by the plaintiff itself regularly according to a method devised by the plaintiff; that this method, as defendants are informed, is the most accurate which the plaintiff has been able to devise; that it is impossible to find a method of such allocation which will be absolutely accurate; and that the system used by the plaintiff approximates accuracy.

It is denied that the State laws and regulations of North Carolina requiring reports prescribe the methods of accounting or of alloca-

tion of revenues and expenses which the plaintiff shall adopt; the said laws and regulations merely require of the plaintiff reports of gross revenue, gross operating expenses, and net revenue.
60 The plaintiff devises its own methods of allocating these items to obtain the figures required to be reported by the laws of North Carolina. It is denied that under the existing accounting methods of the plaintiff for allocating expenses to North Carolina, operating expenses so allocated are understated and net income overstated. It is admitted that only expenses accruing within that State are charged to State expenses, while some traffic passing through that State is assembled or originates at, and is destined to, terminal points without North Carolina at which large operating expenses accrue, no part of which expenses is apportioned to North Carolina, while the mileage revenue therefrom is apportioned to North Carolina. On the other hand, the defendants aver that an enormous amount of interstate traffic of the plaintiff originates in North Carolina destined to points without the State; that large operating expenses accrue at the points of origin in North Carolina and are wholly apportioned to that State, whereas only a small proportion of the mileage revenue of such shipments is apportioned to North Carolina, and portions of such mileage revenue are apportioned to other states across which such shipments are made without the corresponding allocation to such states of any part of the terminal expenses accruing at the points of shipment in North Carolina. The defendants further aver that the same is true as to large amounts of interstate traffic coming from without North Carolina and terminating within North Carolina. For illustration, Wilson and Rocky Mount are among the largest tobacco markets in the State. Great quantities of tobacco are shipped over plaintiff's line from those and other points destined to points in other states. In the assembling, preparation, and initiating of these shipments there are large terminal expenses at the points of shipment, the whole of which are charged in North Carolina expenses, while North Carolina revenue is credited with only a very small mileage proportion of the entire revenue from such shipments. The same thing is true of
61 large shipments from many points throughout the cotton belt in eastern North Carolina, of shipments of tobacco from various smaller markets, of shipments of fruits and vegetables and of shipments of naval stores and other products of this State over Plaintiff's lines in this State.

Large interstate shipments also come from other states into North Carolina destined to points in this State over plaintiff's lines, as for example, to Wilmington, where they are received both for distribution and exportation from this important port. On such shipments there are large terminal expenses at the point of destination in this State, the whole of which are charged in North Carolina expenses, while North Carolina revenue is credited with a very small proportion of the entire revenue from such shipments.

While terminal points in North Carolina are not concentrated in a few large cities like Savannah or Richmond, they are widely

spread throughout all that part of the State served by the plaintiff, and there are great numbers of smaller cities and towns through which the plaintiff's railroad runs which are important shipping, receiving, and terminal points for the large imports into, and exports from this large and highly productive State.

In addition, there are located within North Carolina at Rocky Mount among the largest terminal yards and repair shops of the plaintiff, and other large yards are located at Wilmington, N. C. The defendants are informed and believe, and so allege, that as much as seventy-five per cent of the operating expenses at these points are logically applicable to interstate traffic, but that all of the said operating expenses are charged against North Carolina revenue.

28. It is denied that this method of allocating earnings to the State of North Carolina is illegal or works to the disadvantage of the plaintiff for the purpose of ascertaining the net income of the plaintiff in North Carolina as alleged in article twenty-eight of the complaint.

62 (*a*) On information and belief the defendants deny that traffic which moves through North Carolina greatly exceeds the traffic originating in, or destined to, North Carolina, and that North Carolina escapes terminal expenses on any more than a proper proportion of the plaintiff's total traffic; and the defendants aver that traffic originating in North Carolina runs through many other states which receive the benefit of revenues from shipments for which North Carolina is charged the entire assembling and initial expenses, and that traffic destined to North Carolina likewise runs through many other states which receive the benefit of their mileage proportion of the revenues from shipments, the entire final terminal expenses for which are charged in North Carolina expenses. The defendants further aver that this system of allocation of revenues and expenses which the plaintiff itself has devised and uses, and which the State Tax Commission received from plaintiff and adopted, is a method which evens itself up and gives to the respective states through which the plaintiff's system runs the most accurate possible allocation, otherwise the plaintiff itself would have abandoned this system and devised another.

(*b*) It is admitted that as to individual terminal points in North Carolina, the expenses at such points are less than those at certain larger terminal points in other states as named by the plaintiff in article twenty-eight (*b*). However, as hereinbefore alleged, this simply results from the fact that in other states through which the plaintiff's system runs terminal expenses are concentrated in larger terminal points, while throughout the portion of North Carolina served by the plaintiff terminal expenses are widely disseminated among a multitude of smaller terminal points. The defendants, therefore, aver that the allocation of operating expenses to North Carolina made by the plaintiff and filed with the Tax Commission represents in the aggregate an approximately correct charge of ex-

penses against North Carolina revenue, and that the ratio of
63 operating expenses to operating revenues in North Carolina is truly less than that of the entire system.

(c) It is denied that under the scheme of taxation adopted by North Carolina, property of the plaintiff outside that State and not used in the plaintiff's business in that State, is taxed by the State. The defendants aver that if any properties of the plaintiff outside of the State of North Carolina are taken into consideration in arriving at the assessment of plaintiff's property in the State, it is only done in so far as the said properties outside of the State are a part of the values of the plaintiff's entire organic system and may be properly considered in estimating the true value of the properties of the plaintiff in this State.

It is admitted that the operating revenue and operating expenses for the plaintiff's entire system are kept accurately, in so far as possible, and that its accounting is done under rules prescribed by the Interstate Commerce Commission and is checked by that body, and also by certified public accountants. It is denied that the capitalization of the plaintiff's net income for its entire system, the determination therefrom of the value of the plaintiff's entire property, and the apportionment of this result to North Carolina to give the value of properties in North Carolina is the proper method to be used as a consideration in arriving at the value of the plaintiff's properties in North Carolina.

29. It is denied that in arriving at the valuation of the plaintiff's property for the year 1920 the State Tax Commission did not assess and value the same according to the law of North Carolina. It is denied that either the net-earnings plan or the stock-and-bonds plan alone could have been properly used by the Commission in arriving at the valuation which it placed upon the plaintiff's property without the use at the same time of the other considerations required by the statutes of North Carolina as hereinbefore alleged. The defendants aver that the correctness of the said valuation cannot be
64 checked or tested by an exclusive application of either of the plans referred to in article twenty-nine of the complaint. It is denied that the said valuation, tangible or intangible, was made upon an arbitrary basis or without justification. It is admitted that the said Commission assessed the tangible property of the plaintiff for the year 1920 at a valuation of $39,620,930, or 149.33 per cent more than the same was assessed for 1919; the defendants aver, however, that the assessment of real properties in general in North Carolina for the year 1920 was more than 200 per cent higher than that for the year 1919, a very much larger increase than that applied to the plaintiff's property. It is denied that the State Tax Commission arrived at the assessment of the plaintiff's tangible property by a sole consideration of the Investment in Road and Equipment of the entire system, and it is denied that the said assessment gave to North Carolina any property valuation to which it was not entitled, and which is not properly taxable by it. It is admitted that the tangible property was assessed at $11,246,870, but it is

denied that that assessment was not made in accordance with Sections 64 and 65 of the Machinery Act of 1921. It is admitted that the aggregate valuation for 1920, tangible and intangible, was $50,867,800, and the defendants aver that the said valuation and assessment was correctly arrived at by a due consideration of all the factors, mode and methods required by the statutes of North Carolina, and that the same was legal and correct.

The defendants do not deny that the tables of figures on page 43 of the complaint are correct so far as calculations are concerned. They deny, however, that the proper figure to capitalize was the alleged average net operating revenue of the plaintiff's entire system per year for five years of $8,932,592.89, and that the figures in the second table, showing the allocation of the result of such capitalization to North Carolina at various percentages are
65 in any way the measure of the value of the total properties of the plaintiff in North Carolina, or should properly be considered in arriving at the value of the said properties. The defendants do not deny that the tables of figures on page 44 of the complaint are correct in their calculations. They deny, however, that the figures on that page, showing the capitalization at various percentages of the alleged average net operating revenue of the plaintiff for North Carolian, are, or any one of the said figures is, the measure of the value of the total properties of the plaintiff in North Carolina and subject to taxation by that State; and they deny that the assessment of plaintiff's properties for taxation can be tested or proved by a comparison with any of the said figures.

It is denied that the assessment of the plaintiff's property amounts to a tax on property beyond the jurisdiction of North Carolina, that the same is a burden upon interstate commerce, or is in violation of the commerce clause of the Constitution of the United States.

30. It is admitted that six per cent was the percentage used by the State Tax Commission in capitalizing the plaintiff's net income to the extent that that method was used at all in arriving at the said assessment. The defendants aver that that is a proper figure for such purpose. They aver that six per cent is the legal rate of interest for North Carolina. They deny that the percentage which should have been used is eight per cent or any other figure than six per cent. It is further alleged that the use of a six per cent capitalization of the plaintiff's net income for North Carolina was only one of the many factors to which the State Tax Commission gave due consideration as required by statute in arriving at the assessment for 1920, and that the consideration of this six per cent capitalization method had the effect of making the assessment less than the consideration of other factors would have made it, and resulted, therefore, in a benefit to the plaintiff. The defendants further aver
66 that interest rates on money show temporary fluctuations, and that the values of permanent properties of railroads do not fluctuate in any corresponding manner.

31. It is admitted that the figures quoted in article thirty-one were submitted to the Commissioner of Revenue as bearing on the

question as to whether he should reduce the plaintiff's assessment for taxation. It is denied that he refused to give any consideration to the said figures, and the defendants aver that he did give them due consideration. The defendants aver, however, that the said decrease of net operating revenue from 1916 to 1920 was purely temporary, that for the year 1921 the ratio of operating expenses and taxes to operating revenue is decreasing rapidly in the plaintiff's favor, and that its net earnings are increasing and promise to continue to increase. It is denied that the temporary depression suffered by the plaintiff is in any way an index of what its net earnings will be or was reflected in any corresponding depression in the actual values of the plaintiff's railroad properties. It is denied that the plaintiff's property values fluctuated in correspondence with fluctuation in values which may have occurred with respect to other persons and corporations.

32. It is admitted that the statute of North Carolina required the Commissioner of Revenue to consider the value placed upon the property of the plaintiff by the public, as evidenced by the value of capital stock, bonds, certificates of indebtedness and other obligations, the value of which is based upon the earning capacity of the property, as alleged in article thirty-two; it is denied, however, that the said statute makes that consideration controlling or allows it to be used as the sole determining factor, in arriving at the valuation of the property of the plaintiff in North Carolina.

The defendants deny knowledge or information sufficient to form a belief as to the figures quoted by the plaintiff on pages 45 to 50, inclusive, of the complaint as to its capitalization, par value,
67 and average market value. It is denied, however, that either the alleged figure representing the par value capitalization allocated to North Carolina on mileage basis of $41,150,361.90, or the alleged figure representing the market value capitalization allocated to North Carolina upon a mileage basis of $34,908,626 for 1920, or of $33,696,925 for 1921, is the measure of the value of plaintiff's property in North Carolina, or was or should have been a controlling factor in arriving at the valuation of the same. It is denied that the assessment of the plaintiff's property can be proved or tested by a comparison of either one of these figures.

33. The defendants deny that the so-called franchise tax is not a franchise tax measured by the value of the use of the property but is in truth and in fact an ad valorem tax as alleged in article thirty-three of the complaint. The defendants aver that the said tax is an excise, franchise, or privilege tax imposed upon the privilege of doing a strictly intrastate business within the State of North Carolina. It is denied that the said tax is not levied equally; the defendants aver that the said excise, franchise, or privilege tax, levied upon the plaintiff in addition to the ad valorem property tax, does not and cannot constitute double or unequal taxation and is violative neither of Section 3 of Article V of the Constitution of North Carolina, nor of the Fourteenth Amendment to the Constitution of the United States. It is denied that the ad valorem assessment of

the plaintiff's property is excessive, iniquitous or damaging, and that the franchise or privilege tax of 1/10 of one per cent of the said assessment is in any way excessive, iniquitous, damaging, or illegal It is denied that the said tax is levied under the guise of a franchise tax, but the defendants aver that it is a true franchise or privilege tax, not a property tax, and that it is entirely within the power of the State of North Carolina to levy the said franchise or privilege tax in addition to ad valorem property taxation, and that by
68 reason of the fact that the said franchise or privilege tax is admeasured, not by any earnings from interstate commerce nor by any properties outside of North Carolina, but only by the total properties of the plaintiff within the State of North Carolina, the said tax is in no way a burden upon interstate commerce; that it is not a tax on the privilege of engaging in interstate commerce, nor is its payment made a condition precedent thereto, and that it violates no part of the Constitution of the United Sates.

34. It is denied that the said franchise tax is not uniform and is not levied equally upon corporations, as alleged in article thirty-four of the complaint. It is alleged that the placing of railroad companies in one class and of other corporations in another class, and the imposition of a franchise or privilege tax based on total properties in the State on corporations of the first class, and the imposition of such a tax based on capital stock upon corporations of the second class is a reasonable, legitimate, and perfectly justifiable classification, and in no way violates the rule of uniformity prescribed by Section 3 of Article V of the Constitution of North Carolina, or denies to the plaintiff the equal protection of the law, or deprives it of its property without due process of law, or constitutes a burden upon interstate commerce, or in any way violates the Constitution of the United States or the commerce clause thereof, or the Fourteenth Amendment thereto.

35. Answering allegations of article thirty-five of the complaint, the defendants admit that the plaintiff was required to pay for the year 1920, and did pay, under protest, $50,867.80, the same being the result of a calculation based upon 1/10 of one per cent of the value of the property of the plaintiff, tangible and intangible, in this State, as assessed for ad valorem taxation, used as the measure of the extent to which the plaintiff is exercising its franchise (the privilege of engaging in intrastate commerce) in this State.
69 They admit also that the plaintiff will be required to do the same for the year 1921. They deny that under the provision of Section 82 (3½) of the Revenue Act, the plaintiff should only be required to pay upon one-half of such value. They aver that Section 82 (3½) has no application to railroads or to the franchise or privilege taxes on railroads; that it is a section which was enacted in 1920 and was specifically limited in its application to taxes on corporations as levied in Section 82 of the Revenue Act of 1919; that railroads and the franchise taxes thereon were not included in any part of the said Section 82 of the Revenue Act of 1919; that when Section 82 (6½) was inserted in that section in 1920, as herein-

before alleged, thereby shifting the provision for a franchise or privilege tax on railroads to its present position as subsection (6½) of the said Section 82, it was not intended to make the said Section 82 (3½) applicable to the tax imposed by section 82 (6½); and that the said Section 82 (3½) does not now apply, and never has applied, to railroads or taxes on railroads.

It is denied that the failure of Section 82 (3½) to apply, or to be applied, to the franchise or privilege tax levied upon the plaintiff deprived or deprives the plaintiff of the equal protection of the laws or violates the Fourteenth Amendment to the Constitution of the United States or the uniformity clause of the Constitution of North Carolina.

The defendants pray that the prayers made by the plaintiff in article thirty-five, and each of them, be denied by this Court; they aver that this Court has no power to grant such prayers, or either of them, that the franchise tax paid by the plaintiff to the State of North Carolina for 1920 was a legal tax, correctly ascertained, and lawfully due to the said State, and that the said Section 82 (3½) has no application to such tax, and has no effect to reduce the correct amount thereof to one-half of the amount so paid by the plaintiff.

36. The allegations of article thirty-six are denied.

70 37. Answering the allegations of article thirty-seven, the defendants deny that the imposition upon the plaintiff of an ad valorem property tax, of a franchise or privilege tax of 1/10 of one per cent based upon the ad valorem valuation of the plaintiff's properties within the State, and of an additional income tax of three per cent on net operating revenue, referred to by the plaintiff as a system of pyramiding taxes, amounts to or constitutes a regulation of commerce between the states, a tax upon interstate commerce, or a burden on interstate commerce of the plaintiff, or violates Section 8 of Article I of the Constitution of the United States. The defendants allege that it is perfectly competent for the State of North Carolina, after taxing the property (tangible and intangible) of the plaintiff ad valorem as property, to levy upon the plaintiff an additional tax for the privilege of engaging in intrastate commerce (exercising its franchise in the State), and then to levy an additional tax of three per cent on its net income, which said income tax is levied equally upon all other corporations without discrimination.

38. It is admitted that the plaintiff will owe to the State, counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment for taxes upon its properties in the State of North Carolina, and the defendants aver that the said legal assessment for 1920 was that fixed for that year, and that for 1921 was that fixed for that year, excepting corrections hereinbefore referred to.

39. Answering the allegations of article thirty-nine, the defendants deny that the said assessment is illegal, and that this suit is brought to avoid a multiplicity of suits. It is denied that the said assessment is invalid; it is denied that unless the tax collecting officers of the several counties and municipalities, and the State of-

ficials, defendants herein, are restrained they will proceed to collect any illegal taxes against the plaintiff. On the contrary, the defendants aver that the said taxes which the said officers will pro-
71 ceed to collect are valid and lawful; that they of right will become a first lien upon the real property of the plaintiff in North Carolina if not paid; it is denied that the said rightful lien will constitute a cloud upon the title to the said property against which equity should grant relief; it is denied that the plaintiff will be damaged by the remedies for the collection of the said lawful and valid taxes; and it is denied that the plaintiff has no adequate remedy at law.

Prayer.

Wherefore, the defendants, having fully answered the complaint filed in this suit, pray the Court that every and singular the prayers of the said complaint be denied and that the same be dismissed at the costs of the plaintiff.

JAMES S. MANNING,
Attorney-General of North Carolina;
FRANK NASH,
Assistant Attorney-General of North Carolina,
Solicitors for the Defendants.

WILLIAM P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

72 A. D. Watts, being duly sworn, says that he is one of the defendants in the above entitled suit; that he has read the foregoing answer to the complaint, and that it is true of his own knowledge except as to matters therein stated on information and belief, and as to them he believes it to be true.

A. D. WATTS.

Sworn to and subscribed before me, this 11th day of November, 1921.

W. P. STACY,
Associate Justice N. C. Supreme Court.

Comparative Statement of Taxable Values for the Years 1919 *and* 1920, *Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral, and Quarry Properties, Average Value per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed with County Supervisors.*

(NOTE.—This statement does not include railroad and public service corporations, banks, and corporate excess assessed by the State Tax Commission.)

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Alamance, 1919	257,742	$2,786,845	$10.81	$2,058,055	$6,844,638	$5,532,968	$11,377,606
Alamance, 1920	262,836	9,966,036	37.92	7,159,464	24,964,832	10,537,710	35,472,542
Alexander, 1919	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920	165,761	4,864,885	29.30	681,423	6,527,000	1,956,886	8,483,886
Alleghany, 1919	143,309	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919	328,634	2,663,408	8.11	964,020	4,379,115	3,781,961	8,161,076
Anson, 1920	329,715	10,529,114	31.93	2,855,697	13,384,811	6,831,284	20,216,095
Ashe, 1919	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920	130,932	3,863,827	29.51	308,197	4,793,754	1,133,928	5,927,682
Beaufort, 1919	379,913	3,422,611	9.00	2,534,192	6,365,173	4,231,976	10,597,149
Beaufort, 1920	396,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919	450,883	3,040,339	6.74	862,130	4,055,859	3,467,887	7,523,746
Bertie, 1920	400,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
Bladen, 1920	524,585	10,092,335	19.24	794,790	11,630,040	3,418,325	15,048,365
74 Brunswick, 1919	476,230	2,406,552	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920	502,593	5,477,845	10.90	970,035	7,953,027	2,017,305	9,970,332
Buncombe, 1919	312,642	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797

Buncombe, 1920	.....	.....	....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920	316,304	7,164,477	22.65	1,932,615	11,047,772	4,793,304	15,841,076
Cabarrus, 1919	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920	222,036	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919	227,055	1,809,693	7.97	669,221	3,502,721	2,142,059	5,644,780
Caldwell, 1920	258,296	7,792,632	30.17	2,896,422	13,257,242	4,458,020	17,715,262
Camden, 1919	145,857	1,083,289	7.42	58,607	1,288,061	672,329	1,960,390
Camden, 1920	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919	239,554	1,703,631	7.11	1,056,084	2,993,060	1,586,379	4,579,439
Carteret, 1920	233,162	7,972,149	34.19	1,650,790	10,405,339	2,940,095	13,345,434
Caswell, 1919	262,748	1,686,517	6.42	116,680	1,803,197	2,188,466	3,991,663
Caswell, 1920	268,746	8,743,808	32.54	309,340	9,053,148	2,920,697	11,973,845
Catawba, 1919	256,932	2,460,000	9.58	1,604,830	4,692,916	5,370,515	10,063,431
Catawba, 1920	254,423	12,339,008	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919	404,913	3,063,242	7.04	504,565	4,082,437	3,551,644	7,644,081
Chatham, 1920	435,773	10,063,328	23.09	1,243,459	11,813,037	4,594,017	16,407,054
Cherokee, 1919	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919	99,067	1,159,788	11.60	582,677	2,007,621	1,778,608	3,786,229
Chowan, 1920	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919	278,395	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920	277,843	16,422,057	59.11	4,554,698	28,158,726	11,168,356	39,327,082
Columbus, 1919	458,631	3,429,666	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920	.....	.....	....	.....	15,789,229	6,600,000	22,389,229
Craven, 1919	364,212	2,421,364	6.65	4,354,543	7,617,226	4,097,447	11,714,673
75 Craven, 1920	323,112	15,488,629	47.94	13,256,829	28,745,458	9,352,424	38,097,882
Cumberland, 1919	338,497	3,116,070	9.21	2,513,375	6,348,011	4,990,251	11,338,262
Cumberland, 1920	358,317	12,835,535	35.82	7,393,804	20,522,039	7,677,734	28,089,773
Currituck, 1919	148,426	1,513,584	10.20	.....	1,733,291	705,677	2,438,968
Currituck, 1920	125,080	4,541,124	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1919	208,400	494,859	2.37	100,929	626,963	301,642	928,605
Dare, 1920	.....	.....	....	.....	2,282,743	593,808	2,876,551
Davidson, 1919	35,442	.....	....	.....	6,957,305	3,806,554	10,763,859

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Davidson, 1920	355,066	15,295,793	....	6,611,775	30,638,102	9,691,903	40,330,005
Davie, 1919	160,640	1,529,050	9.52	358,529	2,294,469	3,043,548	5,338,017
Davie, 1920	162,798	7,224,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894
Duplin, 1920	457,279	23,071,185	50.45	1,100,364	24,211,549	7,285,518	31,497,067
Durham, 1919	178,534	3,569,232	19.99	8,021,399	14,777,121	20,808,813	35,585,934
Durham, 1920	182,608	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	306,562	4,131,420	13.60	3,036,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,680	2,871,776	12.45	9,546,925	14,234,803	22,223,137	36,457,990
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,486	9,172,680
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,700	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,506	8,192,666	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,289	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,986,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	326,225	5,631,242	1,663,562	7,294,894
Graham, 1919	177,414	984,505	5.55	28,350	2,132,988	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,869,736	1,337,240	6,206,976
Granville, 1919	319,516	2,839,542	8.88	1,267,086	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	38.20	3,463,640	16,088,145	6,775,885	22,864,030
Greene, 1919	159,369	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,466	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,587	48,173,459
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,889	5,425,881	10,168,771

Harnett, 1920	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919	321,154	3,037,607	9.45	1,779,507	6,120,975	2,762,717	8,883,692
Haywood, 1920	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,422,194
Hertford, 1919	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,869
Hertford, 1920	201,537	8,738,122	43.36	1,991,046	10,747,168	3,609,665	14,356,833
76 Hoke, 1919	224,703	2,129,767	9.48	300,364	2,653,091	2,020,935	4,674,026
Hoke, 1920	221,230	9,967,460	45.05	944,313	11,244,263	2,995,910	14,240,173
Hyde, 1919	275,961	1,540,190	5.58	40,230	1,619,250	1,071,108	2,690,358
Hyde, 1920	420,604	11,837,110	28.14	443,911	12,281,021	2,035,801	14,316,822
Iredell, 1919	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920	364,507	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919	291,748	1,555,849	5.33	188,013	2,168,624	1,993,645	4,162,269
Jackson, 1920	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919	481,735	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920	498,946	32,620,897	65.38	7,092,072	42,030,138	15,477,315	57,507,463
Jones, 1919	291,477	1,666,958	5.72	260,788	1,969,921	1,378,496	3,348,417
Jones, 1920	294,634	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919	155,733	1,467,390	9.42	926,313	2,735,378	2,144,202	4,679,580
Lee, 1920	163,139	6,712,698	41.15	1,019,819	8,706,469	3,371,944	12,078,413
Lenoir, 1919	222,375	2,205,289	9.92	2,329,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920	239,868	20,753,505	86.52	11,629,585	33,857,010	10,910,400	44,767,410
Lincoln, 1919	179,225	2,119,195	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920	193,391	7,504,532	38.80	2,009,709	12,584,088	5,417,219	18,001,307
Macon, 1919	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920	275,716	5,011,838	18.18	189,631	5,201,469	1,330,869	6,532,338
Madison, 1919	262,922	2,108,634	8.02	392,267	3,241,392	2,617,167	5,858,559
Madison, 1920	278,933	7,576,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,956,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	44.72	2,699,065	15,613,311	6,799,760	22,413,071
McDowell, 1919	254,751	.....	....	.....	2,675,983	1,042,136	3,718,119
McDowell, 1920	241,210	2,814,834	11.67	1,540,981	8,139,746	3,861,589	12,001,335
Mecklenburg, 1919	313,806	4,062,705	12.85	13,112,770	23,133,825	15,082,064	38,217,889
Mecklenburg, 1920	314,277	14,423,868	67.31	56,054,830	93,500,878	33,585,655	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,263	4,340,208	1,133,117	5,473,325

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

	Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
	Montgomery, 1919...	288,986	1,766,532	6.11	629,642	2,858,839	2,478,702	5,337,541
77	Montgomery, 1920...	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
	Moore, 1919.....	415,165	3,178,355	7.65	1,871,452	5,434,221	3,005,237	8,439,458
	Moore, 1920.....	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
	Nash, 1919.....	335,415	3,878,799	11.50	3,219,117	7,865,680	8,391,768	16,257,448
	Nash, 1920.....	323,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
	New Hanover, 1919.....	92,962	2,100,440	22.59	10,087,280	14,941,453	5,406,709	20,348,162
	New Hanover, 1920.....	114,132	3,171,311	28.05	14,309,005	37,517,377	12,528,021	50,045,398
	Northampton, 1919.....	318,278	3,705,130	11.64	623,790	4,463,235	4,436,914	8,900,149
	Northampton, 1920.....	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
	Onslow, 1919.....	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
	Onslow, 1920.....	416,808	7,308,697	20.69	992,565	10,807,997	2,756,647	13,564,644
	Orange, 1919.....	241,018	1,951,875	7.78	1,051,230	3,916,209	3,078,757	6,994,966
	Orange, 1920.....	244,404	7,866,281	32.19	2,219,764	10,086,045	6,222,234	16,308,279
	Pamlico, 1919.....	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
	Pamlico, 1920.....	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
	Pasquotank, 1919.....	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
	Pasquotank, 1920.....	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
	Pender, 1919.....	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
	Pender, 1920.....	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
	Perquimans, 1919.....	151,630	1,431,991	9.44	473,929	2,009,068	1,684,783	3,693,851
	Perquimans, 1920.....	135,126	4,579,632	33.89	1,035,330	5,739,600	2,359,005	8,098,714
	Person, 1919.....	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
	Person, 1920.....	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,076,795
	Pitt, 1919.....	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
	Pitt, 1920.....	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,391	61,871,989
	Polk, 1919.....	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
	Polk, 1920.....	130,925	3,231,221	24.61	403,878	5,043,541	3,691,363	8,734,904

Randolph, 1919	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920	489,717	13,352,406	27.27	2,842,531	18,468,305	7,049,532	25,517,837
Richmond, 1919	271,037	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,762
Richmond, 1920	298,155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919	508,290	5,661,400	11.14	2,326,580	9,063,675	8,063,294	17,126,969
Robeson, 1920	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919	345,078	3,213,287	9.08	2,215,162	8,399,673	7,917,904	16,317,477
Rockingham, 1920	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919	530,046	3,850,395	7.26	678,681	4,539,778	4,864,205	9,403,983
Sampson, 1920	578,092	16,169,478	28.00	2,181,805	22,717,990	9,305,331	32,023,240
Scotland, 1919	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471
Stanley, 1919	228,929	1,794,885	7.84	1,109,296	4,727,603	3,983,469	8,711,172
78 Stanley, 1920	245,668	10,574,057	43.04	3,745,636	21,225,000	10,608,893	31,833,893
Stokes, 1919	274,915	2,364,379	8.60	212,216	2,618,965	3,512,501	6,131,266
Stokes, 1920	286,724	10,328,827	36.02	544,334	10,873,161	4,310,595	15,183,756
Surry, 1919	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845,186	26,374,605
Swain, 1919	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919	197,595	1,518,091	7.68	382,984	2,044,250	1,308,115	3,352,365
Transylvania, 1920	198,554	4,684,341	23.59	462,625	5,334,466	2,597,049	7,901,515
Tyrrell, 1919	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830
Union, 1919	389,203	2,975,210	7.65	1,714,823	5,092,979	6,205,125	11,298,104
Union, 1920	392,429	15,605,830	39.77	4,671,356	21,444,971	10,172,675	31,617,646
Vance, 1919	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,165	10,121,596
Vance, 1920	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,735	26,519,301
Wake, 1919	531,678	5,703,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920	506,877	23,181,356	45.73	25,987,726	53,739,885	18,726,589	73,900,221
Warren, 1919	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919	200,868	1,586,739	7.90	501,569	2,180,780	1,556,516	3,737,296

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Washington, 1920.....	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919.....	207,881	1,632,998	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920.....	217,097	6,750,358	31.09	501,234	8,820,897	2,419,708	11,240,605
Wayne, 1919.....	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920.....	339,270	27,607,644	81.37	14,860,093	47,323,132	17,666,582	64,989,714
Wilkes, 1919.....	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920.....	469,130	7,999,140	17.05	880,767	12,352,003	4,357,959	16,709,962
Wilson, 1919.....	223,631	2,866,661	12.82	3,109,243	6,323,509	9,005,000	15,328,509
Wilson, 1920.....	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,562	60,470,862
Yadkin, 1919.....	211,977	1,999,500	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920.....	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919.....	174,935	1,142,880	6.53	83,070	1,335,074	1,204,819	2,539,893
Yancey, 1920.....	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

78½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC AND YADKIN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Affidavit of Murray R. Hubbard in Support of Complainant's Application for Interlocutory Injunction.

S. R. Prince,
Solicitor for Complainant.

L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
Of Counsel.

79 *Affidavit of Murray R. Hubbard.*

Filed Dec. 24, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

ATLANTIC AND YADKIN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Affidavit of Murray R. Hubbard.

STATE OF GEORGIA,
County of Fulton:

Murray R. Hubbard, being first duly sworn, says:

That he is Tax Commissioner for the plaintiff, Atlantic & Yadkin Railway Company, as well as for Southern Railway Company, the Yadkin Railroad Company, and the High Point, Randleman, Asheboro & Southern Railroad Company, and, as such Tax Commissioner, is familiar with the facts and things hereinafter set out:

80 1. That the amount of plaintiff's Property Investment Account reported by it to the Interstate Commerce Commission under the provisions of Section 15-*a* of the Transportation Act was $2,690,349.

2. That the total assessment of $101,960,413 placed by the State Tax Commission in 1920 upon property of plaintiff, Southern Railway Company and two other railroad companies was 207.8% of the assessment of the same properties for 1919 and several previous years. That after the assessment of $101,960,413 finally was fixed by said Tax Commission, affiant was asked when in Raleigh by Mr. Maxwell, one of the Commissioners, and by Mr. Griffin, the Revaluation Clerk of the Commission, if he would perform the clerical work incident to the allocation of the assessment set out to plaintiff, to the several owned and leased lines of Southern Railway Company, to the Yadkin Railroad Company and to the High Point, Randleman, Asheboro and Southern Railroad Company. That in said conference with Messrs. Maxwell and Griffin the method of allocation was determined by them and that affiant's work in connection therewith was merely clerical. That thereafter on July 21, 1920, affiant, as stated in the answer on page 5, wrote a letter to Mr. Griffin, the Revaluation Clerk of the Commission, to which was attached a statement setting out the values allocated to plaintiff and to the other railroads in
81 accordance with the plan agreed upon by Messrs. Maxwell and Griffin as aforesaid. That the assessment of $4,104,710 placed upon the property of plaintiff was not suggested by affiant in any way except that affiant did make the figures according to the aforesaid plan. That plaintiff's assessment for 1919 was $12,262.96 per mile which, multiplied by 207.8% made the 1920 assessment of $25,482.43 per mile and this being multiplied by plaintiff's mileage in North Carolina showed a total assessment for 1920 of $4,104,710. Affiant further says that in said letter he wrote the quotation shown on page 7 of the answer without intention of suggesting of acknowledging that plaintiff's assessment was too low but only because of the fact that the tax rates in the several counties traversed by plaintiff and by the North Carolina Midland were materially lower than the tax rates in counties traversed by Southern Railway for which reason it would follow that the total amount of taxes paid by Southern Railway Company and all its affiliated lines in North Carolina would be reduced if values were imported into counties levying smaller tax rates. Illustrative of how this would have worked out, affiant says that property of Southern Railway Company was subject to an average county levy of about 81c. plaintiff's property was subject to an average county levy of about 77c. and the North Carolina Midland property was subject to an average county levy of about 65c.

82 3. Affiant says that the average assessed value in 1920 per acre of lands in the several counties traversed by plaintiff was as follows:

Chatham	$23.09 per acre.
Forsyth	58.86 " "
Guilford	52.98 " "
Lee	41.15 " "
Randolph	27.27 " "
Rockingham	57.79 " "
Stokes	36.02 " "
Surry	38.72 " "

And affiant further says that in estimating the value of plaintiff's right of way land he fixed the value thereof at $100 per acre when the average value of lands in said counties assessed by the State Tax Commission was much less than one-half that amount.

4. Affiant says that the so-called intangible value of a railroad arises either from the fact that the market value of its stocks and bonds is greater than the value of the physical property or because of the fact that its net earnings capitalized at a fair percentage show a value for the property greater than the value of the physical property. That under the method generally used in assessing railroads the plan is to deduct the value of the physical property from the value placed upon the entire property and in such case the excess value is
83 found to be the value of the intangible property. Affiant says that, tested by these rules, the assessment of $4,104,710 is far in excess of any value that can reasonably be found for plaintiff's property.

(Signed) MURRAY R. HUBBARD.

Subscribed and sworn to before me this 21st day of December, 1921.

(Signed) J. W. SMITH,
Notary Public.

84 *Motion of Plaintiff to Amend Bill and Order Denying Motion.*

Filed —— 28, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY CO., Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Motion to Amend.

Comes the complainant and moves the Court for leave to amend its bill in accordance with the amendment hereto attached a copy of which has been served upon counsel for the defendants.

Dated January 24, 1922.

S. R. PRINCE,
Solicitor for Complainant.

The foregoing motion of complainant to amend its bill in this cause came on by consent of all parties to be heard by Circuit Judge Edmund Waddill and District Judges James E. Boyd and Henry G. Connor, the Court convened under Section 266 of the Judicial Code of the United States for the hearing of the complainants' application for an interlocutory injunction, and the Court, having duly considered the said motion and being of the opinion that said amendment should not be allowed,

It is ordered and decreed that complainant's motion to amend be and it is denied.

EDMUND WADDILL, JR.,
Circuit Judge.

JAS. E. BOYD,
H. G. CONNOR,
District Judges.

85 *Amendment to Bill, Adding Secs. 8½ and 14½.*

Filed January 24, 1922.

In the District Court of the United States for the Western District of North Carolina.

ATLANTIC & YADKIN RAILWAY CO.

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

Atlantic & Yadkin Railway Co. by leave of Court first had and obtained, amends its bill of complaint filed herein by adding the following sections:

(8½) That the undervaluation of real and personal property in North Carolina, other than the property of railroads, including that of this plaintiff, prior to and since the enactment of the Revaluation Act and Section 28 (*a*) of the Machinery Act of 1921, has been systematic and intentional with the design to discriminate against plaintiff and other railroads and cast upon them an undue share of the burdens of taxation for the purpose of relieving such other property of its just proportion of taxation, and by this systematic and intentional undervaluation of real and personal property, the property of plaintiff has been valued higher than that of individuals and other corporations, and plaintiff avers that such discrimination is in contravention of Article 5, Section 3 of the Constitution of North Carolina and of the Fourteenth Amendment to the Constitution of the United States.

(14½) Plaintiff shows that Schedule D of the Revenue Act of 1921, known as the Income Tax, is unconstitutional and void for the following reasons:

(*a*) For that it is not a tax on income, but is in truth and in fact a tax upon operating income derived by railroad companies from interstate and intrastate commerce, and for the reason that
86 from the operating revenue arrived at under the said law there are not allowed many of the deductions required by the Standard Classification of Accounts of the Interstate Commerce Commission, which Standard Classification of Accounts was promulgated by the said Interstate Commerce Commission under the provisions of the Interstate Commerce Act passed by Congress, and which are so regulated as to ascertain in what is the net income of railroads engaged in interstate commerce. Complainant says that among other items which are directed to be deducted by railroads in interstate commerce from operating income, in order to arrive at net income, are the following:

Rent for leased roads,
Joint facility rents,
Miscellaneous rents,
Separately operated properties—loss,
Interest on unfunded debt,
Income transferred to other companies,
Miscellaneous income charges,
Interest on funded debt,

and avers that in order to ascertain the net income of railroads engaged in business in interstate commerce, as plaintiff is, according to said Standard Classification of Accounts of the Interstate Commerce Commission, promulgated as aforesaid, it is necessary to deduct the above items.

(*b*) The method of arriving at net income stated in Section D of the said Act as applied to this interstate carrier, is not net income as the same is defined and arrived at under the Standard Classification of Accounts of the Interstate Commerce Commission, in that the Standard Classification of Accounts directs that there shall be deducted from the net operating income not only the deductions provided for in said law of North Carolina, but in addition thereto the following:

Rent for leased roads,
Joint facility rents,
Miscellaneous rents,
Separately operated properties—loss,
Interest on unfunded debt,
Income transferred to other companies,
Miscellaneous income charges,
Interest on funded debt.

87 The result is that the machinery provided for by the said statute for the ascertainment of net income does not in truth and in fact produce net income, which under Section 101 it is declared to be the purpose of the said Act to tax. Furthermore, the method outlined in said law for arriving at net income produces a figure which is not in truth net income, but which contains in part gross income, and in so far as it does include gross income, which gross is derived from interstate commerce, said tax is a direct burden upon interstate commerce and is void under the Commerce Clause of the Constitution of the United States.

(*c*) Plaintiff further says that the said statute is unconstitutional and void for that in computing net income it permits corporations other than this plaintiff and like corporations named in said Section 202 to make the many deductions set forth in Section 306 of said Act. This discrimination in favor of corporations and individuals against railroad companies in making deductions in order to ascertain net income violates the Constitution of North Carolina and the United States.

(*d*) Plaintiff further says that the statute is violative of Article 5, Section 3 of the Constitution of North Carolina, for that it does not levy upon railroads and other public service corporations named in said Section 202 a tax on net income, but levies a tax upon operating revenue derived from interstate and intrastate commerce and does not permit the deductions necessary and incidental to the business of plaintiff and expended by it from said income in order to determine net income, and is in violation of the Interstate Commerce Clause of the Constitution of the United States in that it permits a tax as an income tax to be placed on gross income derived from interstate commerce, thereby burdening interstate commerce.

(*e*) That said so-called Income Tax Law violates the Transportation Act of Congress and the Interstate Commerce Act in
88 that it seeks to prescribe a method of accounting by this interstate carrier, when said Acts of Congress have delegated the power to prescribe said accounting to the Interstate Commerce Commission and the said Commission has prescribed and directed that this plaintiff and other interstate carriers keep their accounts in accordance with the methods so prescribed by it.

S. R. PRINCE,
Solicitor for Plaintiff.

STATE OF NORTH CAROLINA,
County of Guilford:

Murray R. Hubbard, being first duly sworn, deposes and says: Atlantic & Yadkin Railway Co., plaintiff herein, is a corporation and that he is one of its officers, to-wit: Tax Commissioner; that he has read the foregoing amendment to the bill of complaint and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein set forth on information and belief and that as to those matters he believes it to be true.

MURRAY R. HUBBARD.

Subscribed and sworn to before me this 24th day of January 1922.

[SEAL.]

R. L. BLAYLOCK,
Clerk U. S. Court.

88½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Affidavits in Support of Plaintiff's Application for Interlocutory Injunction.

S. R. Prince,
Solicitor for Plaintiff.

L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
Of Counsel.

89 *Affidavit of Murray R. Hubbard.*

Filed Dec. 24, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Affidavit of Murray R. Hubbard in Support of Plaintiff's Application for Interlocutory Injunction.

STATE OF GEORGIA,
County of Calhoun:

Murray R. Hubbard, being first duly sworn, says:
That from 1900 to 1904 he was Secretary of the Kentucky Railroad Commission and from 1904 to date has been continu-
90 ously in the service of either the Southern Railway Company or its affiliated lines or the United States Railroad Administration, his duties being to return for taxation the property of the

Southern Railway Company and its affiliated lines in the several states traversed by them and to appear before the tax boards of the several states in the manner of the assessment thereof. At the present time he is Tax Commissioner of Southern Railway Company and resides at Atlanta, Georgia.

That under the Revaluation Act of North Carolina, approved March 11, 1919, the property of every citizen of the State was to be valued at its true value in money, and in accordance with Section 31 of said Act there was to be made a complete revaluation of the property of railroads. The Tax Commission made a tentative assessment for 1920 of Southern Railway's properties, the Southern Railway Company excepted thereto, and at the hearing affiant proved that the net earnings of Southern Railway Company for the System as a whole showed an average for the five years of $21,889,-648.00, which sum, capitalized at 7%, showed a valuation for the System of $312,709,260.00 and a valuation for North Carolina of $68,170,618.00 under the gross earnings ratio of 21.8%. Affiant also proved the total par value of the outstanding stocks and bonds of Southern Railway Company and offered to agree with said Tax Commission upon the fair market value of said stocks and
91 bonds, if the Commission should desire to make the assessment under that plan. Affiant proved the amount of gross revenue and operating expenses allocated to the State of North Carolina for the five year period 1919-1915 and also the amount of taxes paid in said State, and that the average annual net earnings so arrived at during said five year period were $6,117,625.00, but affiant made proof in connection therewith of the fact that operating expenses so allocated to North Carolina were understated and that the average net earnings of $6,117,625.00 was not a fair basis for valuation of the property in North Carolina and gave at length the reasons therefor, which reasons are briefly those set out in the bill filed herein. Affiant further offered proof that the annual return upon capital invested in banking, merchandise, and other enterprises in North Carolina was at least 8%; that no railroad securities yielding 6% were at the time selling for their par value in the market; that railroads enjoying the highest credit of any in the country including Southern Railway Company were paying as much as 7½% for money, and that these facts should be considered by the Commission in determining what was a fair percentage of capitalization. The Tax Commission concluded to use a plan of capitalizing the net earnings in order to arrive at the true value in money of the property of Southern Railway Company in North Carolina and at first found a value, arrived at by capitalizing at 7% North Carolina net operating revenue for years 1919-1915 without making de-
92 duction for taxes paid in the State of North Carolina, which, for the year 1919, amounted to more than nine hundred twenty-two thousand dollars. The value thus arrived at was $103,-730,071.00, but affiant protested so vigorously against the failure to make a deduction of the amount of taxes paid that the Tax Commission thereafter changed its plan and arrived at the assessment of

$101,960,400.00 by capitalizing the average net earnings in North Carolina for the five years 1919-1915, amounting to $6,117,625.00, but changed the percentage of capitalization to 6% instead of 7% which had been used before deducting taxes. That said sum, $101,-960,400.00 was determined by the Tax Commission to be the true value in money of the property in North Carolina of Southern Railway Company and the independently operated lines, Atlantic & Yadkin Railway Company, High Point, Randleman, Asheboro & Southern Railroad Company and Yadkin Railroad Company, and from said sum of $101,960,413.00 the Tax Commission fixed and deducted a valuation of $4,104,710.00 for the Atlantic and Yadkin Railway Company; of $688,895.00 for the High Point, Randleman, Asheboro and Southern Railroad Company; and of $561,114.00 for the Yadkin Railroad Company, after which deductions it found the valuation of Southern Railway Company to be $96,605,694.00. Affiant says that said valuation of $96,605,694.00 finally adopted was not reduced at all from a figure in excess of $100,000,000 by a
93 due consideration of the capitalization of plaintiff's net income for the State of North Carolina at 6 per cent, nor of the market value of the plaintiff's stocks and bonds and other securities. Affiant says that said Tax Commission did nothing other than to find that $6,117,625.00 was average net earnings allocated to North Carolina for the five years 1919-1915; that 6% was the figure for capitalization, and that a 6% capitalization of $6,117,625.00 showed for North Carolina a valuation of 101,960,413.00 for Southern and the other lines before mentioned, and then fixed the respective valuations set out for each of said railroads, of which total valuation the value of the Southern was found to be $96,605,694.00. Notwithstanding the proof above set forth and with no proof to the contrary before the Commission, it adhered to its assessment of $96,605,-694.00, upon which amount affiant thereafter paid taxes for the year 1920; said payments were made under protest.

That the Commissioner of Revenue of the State of North Carolina on June 21, 1921, heard the application of affiant for a review of Southern Railway's 1921 assessment. At this hearing affiant made proof as follows:

(1) As to error of method used in 1920 by the State Tax Commission in fixing the value of its property at $96,605,694.00, as set forth above.

(2) That 6%, the figure used for capitalization of net income, was too low.

(3) That the market values of railroad securities in 1921
94 were materially less than on May 1, 1919. That the cost of materials used generally in railroad construction was much less in 1921 than in 1920 or at May 1, 1919.

(4) That the average net income allocated to North Carolina should not be used for capitalization in order to determine the value of the property in the State because in said allocation under existing

methods the operating expenses were understated, with the result that net income was overstated.

(5) That the average annual net income of Southern Railway Company as a whole for the five year period 1920-1916 was $21,-274,027.89. That the true value in money of the property could be fairly ascertained by capitalizing the aforesaid sum at 8% or certainly at not less than 7% and then apportioning to North Carolina either a road mileage or gross earnings proportion of the amount thus ascertained to be the true value in money of the property in all states. That the values thus ascertained for the system as a whole were as follows:

Capitalization at 8%	$265,925,349.00
Capitalization at 7%	303,914,684.00

And that the true value in money of the property in North Carolina thus ascertained would be as follows:

95 Eight per cent capitalization—

On road mileage basis 20.1%	$53,450,995.00
On gross earnings basis 22%	58,503,577.00

Seven per cent capitalization—

On road mileage basis 20.1%	$61,086,851.00
On gross earnings basis 22%	66,861,230.00

(6) That the application of plaintiff, dated May 24, 1921, to the Commissioner of Revenue for a review and a reduction of the aforesaid assessment of $101,964,013.00 (of which total the valuation of Southern was $96,605,694.00) stated the affiant's belief that on May 1, 1921, the value of the Southern's owned, leased, and operated lines in North Carolina (which included the Atlantic & Yadkin Railway, High Point, Randleman, Asheboro & Southern Railroad, and the Yadkin Railroad) was $68,170,618.00. That at the hearing of said application before the Commissioner of Revenue on June 21, 1921, affiant explained to said Commissioner that the valuation of $68,170,618.00 was determined by capitalizing net earnings for the years 1919-15, which were the only figures available to him upon May 24, 1921. That upon June 21, 1921, the net earnings for the years 1920-16 were known to affiant to be $21,274,027.89, and that affiant then believed and stated the highest true value which reasonably could be fixed for the Southern and aforesaid railroads in North Carolina was $66,861,230.00, as before set
96 out. Affiant states further that at the time of such presentation to the Commissioner of Revenue the tentative value of the property of Southern Railway made by the Interstate Commerce Commission, as set forth in the bill on pages 24 and 25 was not known to him.

Affiant says that under date of July 21, 1921, the Commissioner of Revenue advised him by letter that he had arrived at a value of

the Southern Railway's properties of $102,504,843.00. That value included other independently operated lines, which, being deducted, left as a value of the Southern Railway's property in North Carolina the sum of $96,605,694.00 which said value was further reduced by reductions in real estate off the main right of way to the final figure of $96,306,357.00. Affiant gave notice to the Commissioner of Revenue of an appeal to the State Board of Equalization. He was thereafter advised that the law did not permit a hearing by the State Board of Equalization and the matter was reheard by the Commissioner of Revenue and again proof was offered on the various points above set forth to show the excessive valuation of Southern Railway's property. On August 31, 1921, the Commissioner of Revenue advised affiant that the apportionment of the assessment to Southern Railway Company in North Carolina amounted to $96,306,357.00. The Commissioner of Revenue has not advised affiant of what part of the above total is the physical or tangible property and what part the franchise, but affiant was advised by the tax officer of
97 another railroad in North Carolina that the Tax Commission had in response to an inquiry from him advised him that the Southern's tangible assessment for 1920 was $78,778,169.00 and intangible, $17,528,188.00.

That in those states in which affiant appears before the State Tax Boards in which the capitalization of net income plan is used to ascertain the value of the property, the percentage figures used by assessing boards in recent years have been as follows:

Georgia	8 %
Alabama	8 %
Mississippi	8 %
Louisiana	8 %
Tennessee	10 %
Kentucky	7 %
Ohio	8½%
Indiana	8 %

Affiant says that the total taxes paid by Southern Railway Company in the State of North Carolina for state, county, and municipal purposes for 1920 were $874,888.73, and if the present assessment remains, then, due to increased county rates, he estimates the actual tax to be paid will exceed one million dollars.

Affiant further says that in several of the states traversed by Southern Railway ad valorem taxes are paid upon the full value of the property, tangible and intangible, but in no one of said states
98 is a franchise or privilege tax paid based on the valuation upon which ad valorem taxes are paid. That the method used for ascertainment of the value of franchise or intangible property is to deduct the assessed value of the tangible property from the amount determined to be the total value of the property within the state and the remainder is the intangible value.

That under date of September 22, 1921, Honorable Baxter Durham, State Auditor, certified to Southern Railway Company the fran-

chise or privilege tax assessed under the provisions of Section 82 (6½) of the Revenue Laws, Chapter 34, North Carolina Public Laws of 1921, in the aggregate amount of $96,306.35.

Affiant says it is true, as stated in the answer, that plaintiff's mileage in North Carolina of first Main Line is 1,093.02; of Second Main Line, 175.74; and of Side and Yard Tracks, 373.04; and of all Tracks, 1,641.80. Affiant also says that in all states First Main Line operated is 6,971.08; Second Main Line, 726.04; Side and Yard Tracks, 2,307.49; and of all Tracks, 10,004.61. That if All Track Miles are to be used as a proper basis for distribution, and Atlantic Coast Line Trackage in North Carolina (121.46) also is to be considered, then the percentage applicable to North Carolina would be 17.62%. Affiant says it is also true, as stated in the answer, that neither the mileage of 1,093.02, First Main, nor of 1,641.80, All Tracks, includes independent lines in North Carolina, con-
99 trolled by ownership of stock, and that the North Carolina mileage of said railroads is First Main, 357.43; Second Main, none; Side and Yard Tracks, 65.19; Total All Tracks, 422.62, addition of which would make total mileage in North Carolina of railroad owned, operated, leased and controlled of First Main, 1,571.91; of Second Main, 175.74; of Side and Yard Tracks, 438.23; and of All Tracks, 2,185.88, (which figures include Atlantic Coast Line Trackage Rights in North Carolina over 121.46 miles). Affiant says if railroads in North Carolina, controlled by ownership of stock, are to be considered, then it is also proper to include and consider the mileage of railroads so controlled in all other states, which are as follows: First Main, 3,084.67; Second Main, 257.22; Side and Yard Tracks, 1,137.12; All Tracks, 4,479.01, and that the comparative showing thereof as to controlled lines only would be:

	1st main.	2nd main.	Side & yard.	All tracks.
Other States ..	3,084.67	257.22	1,137.12	4,479.01
N. Carolina ..	357.43	.....	65.19	422.62
Total ..	3,442.10	257.22	1,202.31	4,901.63
N. C. Proportion	10.38%	0%	5.42%	8.62%

Affiant further says that if the mileages of plaintiff in North Carolina and in other states, and of plaintiff's controlled lines in North Carolina and in other states should be considered and all consolidated the comparative showing thereof would be as follows:

	1st main.	2nd main.	Side & yard.	All tracks.
All States	10,413.18	983.26	3,509.80	14,906.24
N. Carolina ..	1,571.91	175.74	438.23	2,185.88
N. C. Proportion	15.10%	17.87%	12.49%	14.66%

100 Affiant further says that these comparative showings absolutely refute the statement in the answer that the use of plaintiff's First Main Track in North Carolina (1,093 miles) for allocating values to that state is unfair. Affiant says it is the general custom in other states, where second, side and yard tracks are not separately assessed, to use first main line mileage as a basis for allocating values. And affiant says the comparative statements before set out are only mileage figures whereas, if bases other than mileage were used, the favor shown North Carolina by exclusion of controlled lines would be more apparent.

Affiant says that the action of the Tax Commission in 1920 did not indicate that any consideration whatever was given to character of plaintiff's roadbed, fixed equipment, miles of double track, or any other factor except plaintiff's gross and net earnings allocated to North Carolina; that affiant offered proof to said Tax Commission in 1920 and to the Commissioner of Revenue in 1921 that plaintiff's operating expenses in North Carolina were not and could not be kept with mathematical accuracy, and were understated. But that notwithstanding said evidence and without regard for other factors set out in the answer the Tax Commission arrived at a tentative valuation in North Carolina by capitalizing at 7% (without deducting taxes paid in North Carolina) average net earnings of four years, 1919-1916, of $7,261,105.59, or a tentative valuation of $103,730,-
101 071.00. And that said Commission arrived at its final valuation by capitalizing at 6% average net earnings of five years, 1919-1915, of $6,117,624.75, or a final valuation of $101,960,413.00 as before set out herein.

Affiant says that not only would capitalization of net earnings in all states not result in the exportation of tax values from North Carolina but that method would result in the importation of tax values to North Carolina unless due consideration were given to the fact that plaintiff owns and operates large and costly terminals and yards at such points as Alexandria, Va., Norfolk, Va., Charleston, S. C., Atlanta, Ga., Knoxville, Chattanooga and Memphis, Tenn., Birmingham, Ala., and E. St. Louis, Ill.

Affiant says plaintiff owns no tracks in Florida, as referred to in the answer, but operates into Jacksonville over Atlantic Coast Line tracks and pays taxes in that state only upon assessment on rolling stock of about $70,000.00.

Affiant says that the statement in the answer, in the last paragraph on page 18, that real estate was raised by revaluation in 1920 three times and railroad property twice their former assessments is substantially correct.

That on Aug. 10, 1920, the State Tax Commission made its report on revaluation to His Excellency T. W. Bickett, Governor of North Carolina, in which on page 5 appears the following:

102 "Valuation of Railroads.

One frequent criticism has been that the valuation of railroad properties could not be increased, it being understood that they were

assessed at full value before. Our report shows that railroad properties have been increased from $125,417,618 to $250,537,158, or more than doubled. Under the new Interstate Commerce Act the Interstate Commerce Commission is required to make rates that will yield an average return of not less than five and one half per cent upon the railroad lines as a whole, and to find the fair value of these properties as the basis for making the new rates. That Commission has not yet determined the basis on which the value of the railroad lines will be finally fixed. It will take several years to complete the physical valuation of all of these properties. Pending this final valuation the railroad lines have submitted to the Interstate Commerce Commission what is known as their investment accounts and have asked that this basis of value be used for determining the scales of rates and amount of return they are entitled to earn on their properties It seems clear to us that the time has come when the value upon which a railroad or public utility is permitted to earn a return in the value upon which it should pay taxes to this State. In either case the purpose is to find the fair value of the property. So that generally our valuation of the railroad lines in this State is based upon a mileage proportion of their investment account, which they have asked the Interstate Commerce Commission to adopt as
103 the basis for making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines, based upon the volume of business in this State greater than the average volume of traffic on their lines as a whole. * * * The new assessment of railroads does not represent as great an increase as the average increase of other property, for the reason that they were assessed relatively higher than other property before, but we anticipate that it will meet the fair demands of public opinion when it is known that they are assessed like other property at their full value, and upon a valuation quite as high as that upon which they are asking to be permitted to earn a return."

Said Commission also reported as to "Real Estate Values" on page 4 of said report as follows:

"So that values as of May 1, 1919, became relatively conservative values, and we know by numerous tests that generally valuations have been conservatively made as of that date.

The increase in real estate values is large, but when subjected to any reasonable test they are shown to be conservative. In this connection it is interesting to note the increase in the total value of farm products produced in this State since 1915, when real estate was last valued:

Total value farm products, 1915	$197,185,000
Total value farm products, 1919	683,168,000."

104 Said Commission later on Dec. 31, 1920, made another report to the Governor which among other things and under "Real Estate Values," page VII, was as follows:

"They were made with reference to actual value on May 1, 1919, and under instructions to use such values with reference to that date as were deemed to be stable. The peak of speculative values in lands was reached in the fall of 1919, after the tobacco and cotton markets for that season developed unprecedentedly high prices for these products, and continued into the first half of 1920. The United States Department of Agriculture makes an annual appraisal of the average value of farm lands in all states. Their estimate of 1919 average value for this State was $47.00 per acre; for 1920, $75.00 per acre. The revaluation average was $38.94, or $8.00 per acre less than the 1919 average. This demonstrates that the revaluation values did not approximate the peak of speculative values. We should be equally cautious to avoid the other extreme of basing values for the future upon a congestion that has temporarily almost destroyed the market for real property."

Affiant further says it is not true, as stated in paragraph 2 on page 24 of the answer, that the Interstate Commerce Commission has fixed rates for plaintiff upon a basis which shows for plaintiff property values in North Carolina of $111,308,323.00. Affiant
105 also says that in the action of the Interstate Commerce Commission referred to no property value of any interstate railroad was allocated to any state, nor has it even appeared that any certain value was assigned to any one railroad but that a lump sum valuation was arrived at for all railroads.

Affiant is so informed and believes it to be true that the records in the office of the North Carolina Commissioner of Revenue show that the interstate Commerce Commission has found the reproduction cost, less depreciation, of the entire property in Virginia and North Carolina of Norfolk Southern Railroad to be $26,028,366. That the total mileage of Norfolk Southern is 900.543, of which 790.264 miles, or 87.754%, are in North Carolina. That the assessment fixed in 1921 for Norfolk Southern by the Commissioner of Revenue is $22,840,932, or 87.754% of the Interstate Commerce Commission valuation of $26,028,366 before set out.

Affiant is informed and believes it to be true that the records in the office of the North Carolina Corporation Commission show that the Interstate Commerce Commission has found the reproduction cost, less depreciation, of Winston-Salem Southbound Railway (all in North Carolina) to be $4,753,006 and the value of its land to be $378,088, an aggregate of $5,131,094. That the valuation of said railway by the Commissioner of Revenue in 1921 is fixed at
106 $4,792,120, or $238,974 less than the Interstate Commerce Commission valuation before set out.

(Signed) MURRAY R. HUBBARD.

Subscribed and sworn to before me this 19th day of December, 1921.

(Signed) J. W. SMITH,
Notary Public, Fulton County, Ga.;
Notary Public, State at Large, Georgia.

My Commission Expires Oct. 5, 1923.

107 *Affidavit of A. H. Plant in Support of Plaintiff's Application For Interlocutory Injunction.*

Filed Dec. 24, 1921.

DISTRICT OF COLUMBIA,
City of Washington:

Personally appeared before me, a Notary Public in and for the District of Columbia, City of Washington, A. H. Plant, a resident of the aforesaid District and City, who, upon being duly sworn, deposes and says that:

(1) He now is and since March 1, 1920, has been assistant to President of Southern Railway Company. From January 1, 1898, to June, 1918, he was the executive accounting officer of Southern Railway Company. From June, 1918, to February 29, 1920, he was Federal Auditor for the United States Railroad Administration and as such directed the accounting for operations of Southern Railway Company's properties which, during that period, were operated by the United States Railroad Administration.

(2) As such executive accounting officer of Southern Railway Company, he formulated and prescribed the accounting methods of the said Railway Company and directed and supervised its accounts in accordance with such methods as were formulated and prescribed by him.

108 (3) Briefly stated, the methods prescribed by him for apportioning results of operations to such individual States were as follows:

(*a*) Revenues:

One hundred per cent of freight and passenger revenues accruing on traffic having both origin and destination within a State (known as intrastate traffic) and one hundred per cent of all miscellaneous revenues earned within a State, such as switching, demurrage, car service, storage and other similar items, are allocated to the State in which they are earned.

Revenues from freight and passenger traffic, having either origin or destination within one State (known as interstate traffic), and revenues from freight and passenger traffic which have origin or destination within one State, but which pass in whole or in part through such State, also known as interstate traffic, but more specifically classified herein as trans-state traffic, are allocated to the States within which such traffic moves on basis of miles traveled by such traffic.

No deductions, adjustments or allowances are made in such allocations for assembling, handling, loading, unloading and other terminal costs incident to the handling of trans-state traffic.

(*b*) One hundred per cent of the maintenance and trans-
109 portation costs incurred within the borders of an individual State are allocated to such State. No additions to or adjustments of such costs so allocated to an individual State are made to equalize or adjust assembling, handling, loading, unloading, and other terminal costs incurred in receiving and discharging trans-state traffic.

(4) Deponent states that he realized some years ago and now realizes that the results or the net revenue produced for the State of North Carolina under the accounting formulæ for allocating revenues and operating costs to States above described, were and now are erroneous and inequitable; that revenues allocated to each State, as revenues are allocated by Southern Railway Company's system of accounting, should be charged with appropriate proportions of all assembling, terminal and handling costs incurred without the State on trans-state traffic moved within a State.

(5) Deponent further states that realizing the existence of such errors and inequalities in the apportionment of revenues and operating costs to individual States, and also realizing that to correct such inequalities it would be necessary for the Railroad Commissions of each State throughout the country to mutually agree upon a uniform method of apportionment, he brought the matter to the attention of the several State Commissions through a representative of the Interstate Commerce Commission, with a view to the pro-
110 mulgation and adoption of a uniform plan of apportionment which would correct the inequalities then existing and which now exist in such apportionments.

Such inequalities and errors were recognized by representatives of both the Federal and State Commissions. The subject was thoroughly discussed and digested at various meetings of committees representing the three interests, i. e., the railroads, the State Commissions and the Federal Commission, the result of all of which was that no relief was given and no change has been made in the method of keeping such accounts.

(6) Deponent further states that in an analysis of operations of Southern Railway Company within the State of North Carolina, it was found by him that of the total traffic handled within the State during a given period, forty-three per cent of it originated without said State and had destinations beyond said State, and that while revenues on such trans-state traffic were apportioned to the State of North Carolina on a mileage basis without deductions or adjustments for terminal costs, such revenues so allocated to said State were not charged with any part of the costs incurred in other States in assembling, handling, loading or unloading such traffic, or for costs incurred in maintaining the facilities in and by which such traffic was handled; and that by reason of the application of the accounting methods employed in the allocation of operating results to
111 States, the operating costs allotted and reported to the State of North Carolina are understated to the extent of said State's just and proper proportion of such terminal costs on at least forty-

three per cent of the traffic transported within such State by Southern Railway Company.

(7) Deponent further states that it is not the practice of Southern Railway Company to make interdivisional charges for costs incurred by individual operating divisions in transporting company material for other operating divisions. The Southern Railway Company uses no fuel coal mined within the State of North Carolina. The coal consumed by it in said State is obtained in the Alabama, Tennessee and Virginia coal fields. No part of the costs to assemble it and to transport it to the North Carolina State Line is charged against the revenues allocated to the State of North Carolina, but such costs are allocated to the States in which the service is performed without corresponding revenues for such service. As a result the coal carrying lines show either high operating cost ratios or costs in excess of revenues earned. As illustrations:

The line Birmingham to Atlanta, over which large quantities of coal are transported for Company use in Georgia, South and North Carolina, shows an operating ratio of 103.67 per cent for the year 1920. The line St. Charles to Bulls Gap, Tenn., another coal carrying line, shows an operating ratio of 114.30 per cent for the same period. The line from the Tennessee fields into Knoxville
112 shows an operating ratio of 113.93 per cent for 1920. Each of these three lines transport coal for use by the Company in operating its trains within the State of North Carolina and no part of the assembling, maintenance or transportation costs incident to the movement of such coal from the mines up to the North Carolina border line is charged against the revenues allocated to said State. The three lines mentioned are economically managed and operated. If they had received revenue credits for services performed for the North Carolina lines and for lines in other States, for which they transported locomotive and other operating coal, their operating cost ratios would have been substantially less and the costs thus lessened would properly be charged against the revenues allocated to the several States for which the service was performed. Therefore, the operating costs allocated to the State of North Carolina are understated to the extent of costs incident to the transportation of fuel coal used within that State from the mines to the State border.

(8) Deponent further states that those data reported in Southern Railway Company's quarterly reports to the Railroad Commission of the State of North Carolina, designated as "operating expenses" for another and additional reason do not truly or accurately reflect the operating costs chargeable to revenues allocated to said State, such other and additional reason being:
113 The operating costs allocated to the State of North Carolina and reported by Southern Railway Company include nothing for hire of equipment or joint facility rents, and to the extent of such accruals within said State, the operating results reflected by the said reports are either overstated or understated, as the case may be. It has been held by the Congress in the Transportation Act that credits or debits arising from such sources should be reckoned with in determining net operating income.

(9) Deponent further states that, based on his intimate knowledge of the operations of Southern Railway Company, as a whole and in the several States in which the Company transports traffic, the costs to earn a dollar of revenue within the State of North Carolina, if such revenues were charged with all proper costs incurred by the Company, would not be less than the costs to earn a dollar on the entire railway.

(10) Deponent further states that the five hundred and thirty-six million, to which defendants refer and of which he took a gross earnings proportion to arrive at a value in North Carolina of $111,308,323.00, includes investment in road and equipment improvements on leased railway property, materials and supplies, and Government allocated equipment. It is proper to first deduct from the total the materials and supplies, because the materials and supplies which were on hand at the time the statements were rendered
114 in July, 1920, were not correct as of May 1, 1921, and if it is proper to include materials and supplies, the amount thereof on hand May 1, 1921, was very much less than in July, 1920. Furthermore, there was no allocation by the Railway Company of the total of its investment account to North Carolina or any other State. In addition to this, while the amount found by the Interstate Commerce Commission to be the value for rate making purposes of all the carriers in what was known as the Southern Group was 91.1 per cent of the total claimed by the Group, affiant avers, on information and belief, and that it is not known to defendants how the 91.1 per cent was arrived at, and it may be that the Commission did not allow 91.1 per cent of the Southern's investment account and allowed more than 91.1 per cent of some other road's investment account in the Southern Group. In other words, the 91.1 per cent was a general average for the Southern Region and did not apply to any particular carrier in so far as the affiant is advised and believes. Affiant states that if it be considered proper to take the book investment, and illustration of the facts as applied to one line in the State of North Carolina will show the fallacy of so doing. The investment account of the North Carolina Railroad, as reported to the Interstate Commerce Commission was $4,975,628.00, whereas it is well known that said sum does not represent by half, the true value of said property.

(11) Deponent further states that it is a fact that the Commission, in its report on the values under Section 15(a) of the Inter-
115 state Act, used the language set forth in the answer at the top of page 16, but the deduction therefrom, "The plaintiff contended that the actual value of property in North Carolina was in excess of one hundred and eleven million," is that of defendants and is not a fact. Furthermore, since the hearing in the case referred to, Ex Parte 74, was had, the Southern Railway has received from the Interstate Commerce Commission, a partial report on its valuation under Section 19(a) of the Interstate Act, and it is affiant's understanding that if such investigation under the valuation section of the Interstate Act had been complete, it would have been

availed of by the Interstate Commission in making its finding on the valuation under Section 15(*a*), and inasmuch as the tentative value as promulgated by the Interstate Commission of affiant's road in the State of North Carolina is now as near completed as is set forth in complainant's bill on page 25, it does not seem proper to affiant, from an accounting standpoint, to use the general finding of the Commission for all roads in the Southern Group, rendered July 29, 1920.

(12) Deponent further states that the test period covered the three years ended June 30, 1917. The year ended June 30, 1915, was below normal. The year ended June 30, 1916, was normal. The year ended June 30, 1917, was above normal, and the average for the three years produced a normal return.

116 (13) Deponent further states that he has had prepared under his supervision for the Interstate Commerce Commission, full statements and diagrams disclosing the results of the traffic conditions of the Southern Railway for the years 1920 and 1921, in connection with the advances heretofore allowed by the Interstate Commerce Commission in freight rates of 25 per cent and passenger rates of 20 per cent. The facts disclosed by affiant's investigation are that the actual traffic transported produced an increase in freight rates of only 20.53 per cent and that that amounted to an increase in gross revenue of only 1.99 per cent due to the falling off in the tonnage and due to the falling off in the higher classes of freight which paid the greater amount of revenue. For instance, the first group, which covered the farm products, fell off 28.67 per cent and the second group, which included tobacco, fell off 25.26 per cent, whereas the third and fourth groups fell off only 9.98 per cent and 16.05 per cent respectively, as compared with the average decline of 18.33 per cent, whereas the decline in the groups covering the major portion of farm products was 28.67 per cent.

Affiant is, therefore, able to state as a fact that the Southern Railway Company suffered very heavily from the decline in its tonnage and that the increase in freight rates did not offset the decline and did not approximately offset the increase in what might be considered normal expenses.

(Signed) A. H. PLANT.

117 Subscribed and sworn to before me this 19th day of December, 1921.

[SEAL.] (Signed) HARRY K. PIMPER,
Notary Public.

118 *Affidavit of J. B. Duke in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

DISTRICT OF COLUMBIA,
City of Washington:

J. B. Duke, being first duly sworn, says:

That he has been connected with the Accounting Department of the Southern Railway Company since March, 1900, and is at this time the General Auditor of the Company, in charge of its books and accounts, which are under his immediate supervision and jurisdiction.

That the main lines of Southern Railway Company in the State of North Carolina constitute funnels through which pass a large volume of traffic originating and terminating without the State. The revenue allocated to North Carolina on this traffic is the mileage proportion of the revenue accruing to Southern Railway Company arrived at on basis of miles hauled in North Carolina compared to the total miles hauled by Southern Railway Company.

That in the allocation of expenses to the State there is charged to North Carolina as the cost for hauling this traffic only
119 the road haulage costs incurred within the State.

That this method does not charge to North Carolina the total expenses which should be charged against the revenue allocated on a mileage basis to the State, and, as a consequence, the net income in North Carolina has been overstated.

That Southern Railway Company is required by North Carolina to report the results of operation within the State and endeavored to keep its accounts and records so as to comply with this requirement. It has been recognized, however, that there are great difficulties involved in keeping the accounts in a manner that would reflect with accuracy the revenues and expenses or net income in any individual State.

That these difficulties are generally recognized and several years ago efforts were made to devise methods by which there could be equitably apportioned to each State a proper part of assembling, terminal or haulage costs incident to interstate and trans-state traffic. The effort to do this was spread over a period of years and a careful study of the subject was made co-operatively by representatives of the various State Commissions and representatives of the railways through a committee appointed for that purpose. The conclusion reached by these joint representatives was:

120 "Whereas, The Joint Committee composed of the Standing Committee on Uniform Railway Statistics of the National Association of State Railroad Commissioners and a Sub-committee of the Committee on Corporate, Fiscal and General Accounts of the Association of American Railway Accounting Officers, have on several occasions in joint conference discussed the formulation of

rules for the assignment of expenses, and revenues by State lines, and

"Whereas, As a result of these discussions, the Joint Committee is unanimously of opinion, in view of the great variety of practices on the part of carriers and of local conditions, it is not possible at this time to arrive at a satisfactory set of rules for the purpose named:

"Be It Resolved, By the Joint Committee, that it is not feasible at this time to attempt the formulation of such rules and that each association for whom the respective committees stand, be requested to report this conclusion, accompanying the respective reports with such explanatory statements as will make clear the basis of the conclusion reached but at the same time expressing their willingness to take up the question at some future time if so requested by their respective associations."

It will be seen from the above that no feasible plan for surmounting the difficulties could be devised.

121 That Southern Railway Company, realizing that the reports do not reflect the actual results of operation by States situated as was North Carolina, has been confronted with the necessity of making the reports under State requirements and has made the reports upon the best basis that could be devised without exceedingly heavy accounting cost, and always realizing that the figures given to North Carolina did not correctly represent the net income for a State situated as is North Carolina, and it was on this account that the Tax Commissioner of Southern Railway Company was advised to make it clear to the tax authorities of North Carolina that the net income so stated was not the true net income for North Carolina, and affiant is advised and hence states that Southern Railway's tax officer did make this clear to the Commissioner of Revenue of North Carolina.

That in a test made by Southern Railway Company several years ago it was determined that of the volume of freight traffic handled in the State of North Carolina 43 per cent represented traffic having both origin and destination without the State, and if there has been any change it is believed that at this time the percentage would be greater. No test has been made as to the volume of passenger traffic passing through the State, but it must be admitted that there is a large volume of such traffic.

122 That operating expenses reported to the State of North Carolina do not include any of the initial or destination terminal costs on the above referred to traffic and as the State has been credited with a mileage prorate of revenue accruing on the traffic, the expenses are obviously understated with a consequent overstatement of the net income within that State.

That the Revenue Commissioner, affiant is advised, used the returns for the five-year period 1915-19 and found the annual average net income to be $6,117,625.00. This makes a ratio of 71.20, which means that it cost 71.20c. to earn a dollar. The System ratio for that period was 77.50, and if that ratio had been applied to the gross revenue which produced the net figure of $6,117,625.00, the result would have been an annual average net income of $4,779,641.00 instead of $6,117,625.00, and if the $4,779,641.00 be capi-

talized at 6 per cent, the capitalization would have been $79,660,-683.00.

That if the Commissioner of Revenue had taken the five years 1916-20, the annual average net income reported to North Carolina would have been $6,385,392.00, and that gives an operating ratio in North Carolina under that erroneous system of arriving at the net, of 74.22. If the gross revenue for the period 1916-20, which produced the above net of $6,385,392.00, had had applied to it the System ratio for the said five-year period of 81.48, the aver-
123 age net for that five years would have been $4,586,793.00, which figure, capitalized at 6 per cent, would give $76,-446,651.00.

That the actual results of operation for the six months ended June 30, 1921, disclose that the Southern Railway Company for said six months lacked, after paying operating expenses, taxes, hire of equipment, and rents for joint facilities, the sum of appproximately $4,500,000.00 of earning sufficient money to pay interest on its funded debt and other fixed charges, exclusive of any dividend. It is true that the succeeding four months, namely, to November 1, 1921, have shown an increase and that the sum which the earnings of the Company up to November 1, 1921, lacked for that ten months of being sufficient to pay the interest on its funded indebtedness and other fixed charges, exclusive of dividends, was approximately $1,-600,000.00 It is stated, however, that if the earnings are to be taken as a criterion of the present value of the property, since the property was to be valued as of May 1, 1921, the period subsequent to June 30, 1921, should not be included, but the earnings during that period would be evidence of value when it comes to consider the value on May 1, 1922.

That the station and yard expenses on the Southern Railway are kept separately from the other expenses, and the records show that for the year ended December 31, 1920, the average cost per ton of station and yard expenses for the Southern Railway as a
124 whole was 42.05c. as compared to a cost for similar classes of expense per ton in North Carolina of 25.87c. per ton. This shows that the terminal costs in the State of North Carolina are not as great as those in other States. This is due to the fact that the larger terminals are in other States and heavier terminal expenses are charged to other States, in accordance with the method of keeping the accounts heretofore explained, and is also due to the fact that North Carolina is so located that it acts as a funnel for the Southern Railway's traffic, viz: traffic moving north and south; traffic from the southeast going northeast; traffic from the southwest going to the northeast; and traffic from the northwest and west which moves east through the State of North Carolina. This may be visualized by reference to the map hereto attached, marked Exhibit "A." On all of this traffic the State of North Carolina receives its full mileage prorate of the revenue, but is not charged with any of the terminal expense, so that when you figure up the terminal expense in North Carolina on a per ton basis, it is shown, as above stated, that it costs 25.87c. per ton as against 42.05c. per ton for the Company as a whole.

That if the operating expenses apportioned to the State of North Carolina included an average System charge for station and yard expenses per ton of freight handled in that State as a charge against the mileage proportion of revenue apportioned to the State,
125 the operating expenses for the year ended December 31, 1920, would have been increased and the net operating income would have been decreased by $2,456,432.07.

That the results of operation for the year ended December 31, 1920, on the line Asheville to Murphy, N. C., were:

Railway Operating Revenue	$1,066,883.75
Railway Operating Expenses	1,382,163.37
Ratio Operating Expenses to Op. Rev	129.55

that is, it took $1.29 to earn $1.00, whereas the same figures for the line Asheville to Salisbury, N. C., were:

Railway Operating Revenue	$5,749,165.96
Railway Operating Expenses	4,448,897.48
Ratio Operating Expenses to Op. Rev	77.55

that is, the purely operating expenses consumed 77.55c. of every dollar.

The above figures prove that the mountain lines cost more to operate and do not pay as great a return as do the low grade lines; and further prove that the volume of the interstate tonnage coming from east and from the west and southwest and passing over the line Asheville to Salisbury and on which no terminal cost is allocated to North Carolina have cut down the operating cost below what
126 it properly should be if a proportion of the terminal charge was placed against that line.

That while it is true that the aggregate of the freight which originates at and is shipped from Winston-Salem is at times greater than that shipped from any other point on the line of Southern Railway, it is also true that there is included in such shipments, not only the freight which originates at the City of Winston-Salem, but also the freight which is forwarded from Winston-Salem, received by Southern from its connections.

If you deal only with the tonnage of freight which originates at Winston-Salem and is forwarded over Southern Railway lines, Winston-Salem is not, by any means, the largest freight shipping point on the line of Southern Railway.

For instance, for the month of September, 1921, there originated at Richmond, Va., and were forwarded over Southern lines, 19,587 tons of freight, whereas the tonnage originated at Winston-Salem and forwarded over Southern lines was only 11,380 tons, the tonnage shipped from Richmond proper being 72 per cent greater than that originated at and shipped from Winston-Salem for that month.

It is true that if there be added to the freight which originates at Winston-Salem the freight which is delivered to Southern
127 Railway at Winston-Salem by connections and by it forwarded, which for the month of September, 1921, was 35,314

tons, or more than three times greater than that which originated at Winston-Salem proper, Winston-Salem tonnage would probably be greater than that shipped from any other individual station.

The relatively large proportion of freight forwarded from Winston-Salem over Southern Railway Lines coming from connections but which does not originate at Winston-Salem consists largely of interstate coal handled in carload lots and in large volume and in cuts of cars, requiring relatively little terminal handling, which makes the terminal expense at Winston-Salem relatively very small.

The terminal expenses at Winston-Salem are not heavy due to the fact that a large part of the freight originating at Winston-Salem is manufactured tobacco and this traffic is, generally speaking, loaded by the shipper and handled at a minimum expense to the Railway Company.

It is a fact that the total freight revenue, including advanced charges, if any, is very heavy at Winston-Salem, but, as stated, it consists largely of freight on tobacco, which moves for great distances and many other lines participate in the rate. It is a further fact
128 that the transportation cost under the item of loss and damage freight claims are heavier on manufactured tobacco than on any other article of freight. The freight received at Winston-Salem is not by any means the largest of any station on the Southern Railway. Charleston, S. C., Knoxville, Tenn., Atlanta, Ga., Birmingham, Ala., and many other stations receive much more freight.

That the system followed by Southern Railway Company in the apportionment of revenue among States has not heretofore been changed because it has not in any one State heretofore worked to the disadvantage of the carrier so as to affect it financially and because a change in the method of approximating revenues and expenses among the States with a view of making these apportionments on a more accurate basis would have proved to be very expensive.

That as an accounting officer of Southern Railway Company, having had immediate jurisdiction over and to do with its accounts during the past twenty-one years, he can see no reason from an operating standpoint why the cost to earn a dollar of revenue within the State of North Carolina should be less than the average cost to earn a dollar of revenue on the entire System.

That it is manifestly apparent that the low operating ratio
129 produced within the State of North Carolina, as reflected by its reports to the State and through its method of accounting, is due to the fact that the expenses assigned to the State include nothing whatever for assembly and terminal costs on trans-state traffic which has both origin and destination without the borders of the State.

That the Southern Railway Company owns the capital stock of the Atlantic & Yadkin Railway Company. The Atlantic & Yadkin Railway Company is separately operated, has a separate board of directors, consisting of six members, three of whom are not in any way connected with the Southern Railway Company, namely, C. H. Ireland of Greensboro, N. C., A. E. Smith,

of Mt. Airy, N. C., and J. C. Watkins, of Greensboro, N. C. Its books and accounts are kept separately and its receipts and expenditures are kept distinct and separate from those of the Southern Railway Company. It makes a separate report to the Interstate Commerce Commission and is from an accounting, treasury, corporate and operating standpoint entirely distinct from Southern Railway Company.

(Signed) J. B. DUKE.

Subscribed and sworn to before me this 19th day of December, 1921.

[SEAL.] (Signed) HARRY K. PIMPER,
Notary Public.

130 *Affidavit of C. E. A. McCarthy in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

STATE OF NEW YORK,
City and County of New York:

C. E. A. McCarthy, being first duly sworn, says:

That he resides in the City of New York and has been connected with the Secretary's office of Southern Railway Company for nearly twenty-four years and has been Secretary for the past year; that by virtue of his office he is familiar with the market price of the bonds and other funded indebtedness of Southern Railway Company and of the stock of Southern Railway Company; that the stock books and bond registry books are kept in his office or under his jurisdiction, and the transfers of certificates of stock and the registration of bonds are made in his office, or under his jurisdiction; that the list of bonds, other funded debt, and stocks of Southern Railway Company shown on the statements hereto attached* and made part of this affidavit is true and correct, and that the prices shown as of the dates given are the prices taken by him from the publication of

*NOTE.—The statements attached to Mr. McCarthy's affidavit are not printed, because too voluminous and the expense of printing is too great. The original statements are filed with the original affidavit in this cause in Court. The statements show for the five year period 1917 to 1921, inclusive, the name of the stock or bond or other obligation, the total par value thereof, the average market price for the year, and the total market value for the year, with the closing market price bid and asked as of April 30th, each year. The summary referred to in the above affidavit is the summary of the total market value for each of the five years as follows:

1917	$329,646,630.76
1918	318,819,008.01
1919	308,668,562.64
1920	295,291,397.62
1921	287,049,221.37
Total	$1,539,574,820.40
Average	$307,914,964.

such information made by the Commercial and Financial Chronicle, a recognized commercial and financial journal, and that the
131 recapitulation shown is true and correct as based upon the information set forth.

The average of the total market value for the five year period 1917 to 1921, inclusive, is, as based upon and shown by the attached statements, the sum of $307,914,964.

(Signed) C. E. A. McCARTHY.

Subscribed and sworn to before me this 16th day of December, 1921.

[SEAL.] (Signed) JENNIE C. DALE,
Notary Public.

132 *Affidavit of T. H. Gatlin in Support of Plaintiff's Application for Interloctutory Injunction.*

Filed Dec. 24, 1921.

T. H. Gatlin, being first duly sworn, says:

That he has been in the engineering service of railway companies for the past thirty years and is at the present time Chief Engineer of Construction of Southern Railway Company and its affiliated lines.

That he has read the answer of A. D. Watts, et al., in the suit of Southern Railway Company vs. A. D. Watts, et al., and states the following facts in answer to and bearing upon certain allegations in said answer, namely:

That the cost per mile of the mileage between points shown in mountainous sections of North Carolina for 444 miles averages approximately $51,000.00 per mile:

Val. sec.	From—	To—	Miles main track.	Value I. C. C. new.	Aver. cost per mile new.	Max. grade.	Max. curv.
53	Murphy Jct NC....	Murphy NC.....	122.3	$4,430,398	$36,000	{N. 3.9% {S. 4.1%	17 deg.
48	Biltmore NC.....	NC-SC State Line.....	42.5	2,261,577	53,000	{N. 4.7% {S. 2.3%	11 deg.
49	Hendersonville.....	Lake Toxaway.....	42.0	901,310	22,000	{N. 2.2% {S. 3.0%	11 deg.
43	SC-NC State Line...	Marion NC.....	64.2	1,766,494	28,000	{N. 1.8% {S. 1.6%	12 deg.
33	Salisbury.....	NC-Tenn State Line....	173.3	13,348,391	77,000	{E. 1.8% {W. 3.2%	12 deg.
	Total		444.3	22,708,170	51,000		

133 That the cost figures shown in above statement were compiled by the Bureau of Valuation in its tentative report, except right of way, which is the value compiled by the Land Department of the Southern Railway. The maximum grades and curvature are as reported by the Southern Railway Company to the Interstate Commerce Commission, Bureau of Valuation.

That the C. C. & O. Railroad was constructed in 1907, an entirely new and modern railroad with a maximum grade of 1.4% compensated, and maximum curvature of 6 deg., which largely accounts for heavy construction cost per mile. Whereas, the Southern Railway Company lines in this section of North Carolina have grades as high as 4.7% and curvature as high as 17 deg., with a heavy operating cost in proportion to curvature and grades. This largely explains the small cost of construction per mile as compared with the cost per mile of construction of the C. C. & O. Railroad.

That the so-called mountain lines of the Southern above referred to have a very much heavier operating cost per year than does the C. C. & O., due to the grade and character of construction, as above set forth. The cost of operation of the 444 miles for a year exceeds the cost of operation of the same mileage in the level portions of the State by $319,906.65.

134 That the actual cost of all work performed in connection with the construction of the double track of 625 miles between Washington and Atlanta was $52,134,000.00. This total cost included the rearrangement of the first main track and a large amount of entirely new double track in a new location, which was necessary in the elimination of excessive grades and curves which existed in the original main track. In a great many cases where the location of new double track is located on original centers, summits were lowered and low places were raised. This involved a large additional expense in operation and construction during the raising and lowering of the first main track. In the construction of the new second main track through the State of North Carolina fully thirty per cent of the first main track was changed to a new location and entirely reconstructed. So that it is not correct to say that the second track cost on an average per mile of $82,884.00. You would have to take into consideration very many other features to arrive at the cost per mile of the second track. As explained, in many instances the total includes the reconstruction of the two tracks. In addition to this, the heavier and more expensive part of the double track construction which is included in the total set forth in the answer was outside of the State of North Carolina.

135 That the terminal facilities in North Carolina do not in the aggregate compare with the terminal facilities in certain other States. It is not a fact that Spencer is the largest terminal yard and repair shop of this company. The following comparative figures show the relative cost of constructing the Spencer yard and terminal with one of the larger terminals located on its line at Inman, Ga. The gross cost of constructing these terminals are as follows:

Inman Yard and Terminal..... $789,847.19
Spencer Yard and Terminal..... 367,455.99

These terminals were reconstructed and enlarged at practically the same time and are located on the same line. The Inman Terminal is nearly twice the size of the Spencer Terminal, with operating expenses in proportion.

(Signed) T. H. GATLIN.

Subscribed and sworn to before me this 22nd day of December, 1921.

(Signed) HARRY K. PIMPER,
Notary Public.

136 *Affidavit of R. E. Johnson and Others in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Gaston:

R. E. Johnson, being duly sworn, says:

That he is a citizen of Gaston County, North Carolina, and has been such for a number of years; that he is engaged in the business of selling agent and merchandise distributor and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

137 Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) R. E. JOHNSON.

Subscribed and sworn to before me, this the 5th day of October, 1921.

(Signed) EDNA J. AHMAND,
Notary Public, Gaston County, N. C.

My commission expires September 3, 1922.

Affidavit of W. C. Idol.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

W. C. Idol, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of banking, being Cashier of the Wachovia Bank & Trust Company, at High Point, and is acquainted with the rate of interest generally prevailing in the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

138 Affiant further says that, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) W. C. IDOL.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

My commission expires the 23rd day of April, 1923.

Affidavit of V. A. J. Idol.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

V. A. J. Idol, being duly sworn, says:

139 That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of banking, being Cashier of the Commercial National Bank, at High Point, and is acquainted with the rate of interest generally prevailing in the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest

generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) V. A. J. IDOL.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

My commission expires the 23rd day of April, 1923.

140 *Affidavit of Frank Wineskie.*

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

Frank Wineskie, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of manufacturing of mirrors, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) FRANK WINESKIE.

141 Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of Guy E. Wells.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

Guy E. Wells, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of automobiles, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

142 Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) GUY E. WELLS.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of J. E. Kirkman.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

J. E. Kirkman, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of manufacturing of furniture and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

143 Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was

in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) J. E. KIRKMAN.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of Harry Raymond.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

Harry Raymond, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North
144 Carolina, and has been such for a number of years; that he is engaged in the business of manufacture of veneers, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) HARRY RAYMOND.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

145 *Affidavit of W. H. Slave.*

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

W. H. Slave, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in

the business of hosiery manufacturer, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) W. H. SLAVE.

146 Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of R. T. Amos.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

R. T. Amos, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of manufacture of hosiery, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in
147 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) R. T. AMOS.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of Wallace B. Davis.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Buncombe County:

Wallace B. Davis, being duly sworn, deposes and says:
That he is President of the Central Bank and Trust Company of Asheville, North Carolina; and has been engaged in the banking business at Asheville for more than fifteen years; that the usual and ordinary rate of interest charged on loans in this community during 1920 and the spring of 1921 was more than six per cent and
148 that when loans were made by banks at six per — it was usually with the understanding that a certain per cent of the loan be kept on deposit. Some loans were made at six per cent straight, but the general rule among persons having money to loan is that the loans are made at from seven to eight per cent, and sometimes even at a higher rate, and this has been so for several years.

(Signed) W. B. DAVIS.

Sworn to and subscribed before me this 23rd day of September, 1921.

(Signed) THOMAS S. ROLLINS,
Notary Public, Buncombe County, North Carolina.

Affidavit of S. M. Hanes.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Buncombe County:

S. M. Hanes, being duly sworn, deposes and says:
That he is Secretary of the Bankers Trust and Title Insurance Company, of Asheville, North Carolina, and that among other things his company is engaged in buying and selling real estate
149 notes. That the usual and ordinary rate of interest charged on loans in this community during 1920 and the spring of 1921, was more than six per cent; that the usual and customary rate of interest charged on loans in this community during said time was from seven to eight per cent, and some loans were even made at a higher rate of interest.

(Signed) S. M. HANES.

Sworn to and subscribed before me this 23rd day of September, 1921.

(Signed) THOMAS S. ROLLINS,
Notary Public, Buncombe County, North Carolina.

Affidavit of R. H. Edwards.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Wayne County:

R. H. Edwards, being duly sworn, says that he is President of the Farmers Loan & Trust Company of the City of Goldsboro; that he is familiar with the current rate of interest charged during 1920 and the spring of 1921 in the County of Wayne, State of North
150 Carolina; that in the opinion of affiant, a majority of the loans made during that period was 8 per cent.

(Signed) R. H. EDWARDS.

Sworn to and subscribed before me this the 20th day of September, 1921.

(Signed) RUTH MIDDLETON,
Notary Public.

My commission expires Aug. 27, 1922.

Affidavit of Geo. D. Bizzell.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Wayne County:

Geo. D. Bizzell, being duly sworn, says that he is Chairman of the County Board of Commissioners of Wayne County; that he is familiar with the current rate of interest charged during 1920 and the spring of 1921 in the County of Wayne, State of North Carolina; that in opinion of affiant, a majority of the loans made during that period was 8 per cent; that during that period the County of Wayne borrowed money in various amounts and paid as much as 8 per cent interest.

(Signed) GEO. D. BIZZELL.

151 Sworn to and subscribed before me this the 20th day of September, 1921.

(Signed) RUTH MIDDLETON,
Notary Public.

My commission expires Aug. 27, 1922.

Affidavit of Fred R. Mintz.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Wayne County:

Fred R. Mintz, being duly sworn, says that he is a member of the co-partnership, trading under the firm name of Williamson Real State of North Carolina; that he has represented the County of Estate Company of the Town of Mount Olive, County of Wayne,

Wayne in the General Assembly for two sessions and was for a number of years owner and editor of the Mount Olive Tribune, a newspaper published in Wayne County; that he is familiar with the current rate of interest charged during 1920 and the spring of 1921 in the County of Wayne, State of North Carolina; that in the opinion of affiant, a majority of the loans made during that period was 8 per cent and over.

(Signed) FRED R. MINTZ.

Sworn to and subscribed before me this the 20th day of September, 1921.

(Signed) RUTH MIDDLETON,
Notary Public.

My commission expires Aug. 27, 1922.

152 *Affidavit of Members of Tax Commission.*

Filed January 23, 1922.

In the District Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

And the other suits against the same defendants brought by Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Norfolk & Southern Railroad Company, Atlantic & Yadkin Railway Company.

Affidavit by the Members of the Former Tax Commission of No. Ca.

STATE OF NORTH CAROLINA,
Wake County:

W. T. Lee, George P. Pell and A. J. Maxwell make this statement under oath.

That in the years 1919 and 1920 W. T. Lee, George P. Pell and A. J. Maxwell were members of and constituted the State Tax Commission, W. T. Lee being Chairman of the State Tax Commission, and had and exercised the duties and responsibilities conferred upon them by Chapter 92 of the Public Laws of 1919 and by Chapter 84 of the Public Laws of 1919, and as the State Tax Commission exercised the powers and duties of a Board of Appraisers of all properties, located within the State of North Carolina, of all railroad companies (excepting certain incidental properties of such companies assessed by local authorities) and also had and exercised supervision of the valuation of all real property of every kind and of the listing

and valuation of all personal property of every kind in all
153 counties of the State. In the supervision of the listing and valuation of such properties by local assessing officers, under the laws hereinbefore referred to, it was the purpose to have all lands listed and valued equally at the true value of such lands and assessing officers were required to ascertain the actual sales value of lands, where there had been a recent sale, and to use the information thus obtained, as well as all other information obtainable, in finding the actual true value of such lands on the first day of May, 1919, and in estimating the value of other similar lands, in cases where there had been no recent sales, and that as to industrial plants of all kinds and the tracks, structures, buildings and equipment of railroad companies—properties which had not been subject to unit sales as a whole and the value of which could not therefore be determined with relation to an actual sale of such properties—it was the purpose to require, and the State Tax Commission did in so far as it could reasonably do so, the owners of industrial plants and railroad companies, to furnish information on forms prepared by experienced persons employed by the State Tax Commission, complete detailed information, under authority of section thirty-one of Chapter 84 of the Public Laws of 1919, of the cost of reproduction of such industrial plants on the price level of May 1, 1919, and as to railroads the cost of reproduction of the properties of such companies new on May 1, 1919, including side tracks, doubled tracks, and all properties owned by such companies in this State, less reasonable depreciation for such of its properties as had depreciated in value, and also information as to capital stock, bonds and other indebtedness, earnings, and so on.

The Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk-Southern Railroad Company, in response to demands made upon them for specific and detailed information as to the cost of reproduction of the properties in this State of each of these companies, did file with the State Tax Commission certain sets of figures,
154 now on file with the Commissioner of Revenue, but did not pretend that such figures even approximated the cost of reproduction of the properties owned by these companies, or either of them, in this State, in the year 1919, but, on the other hand, insisted that it would not be possible for them to furnish this information at any reasonable cost or at any cost within a period of several years. The State Tax Commission, therefore, did not have the benefit of this specific detailed information with respect to the value of the particular properties in this State of these several railroad companies which it did have with respect to, and used in, the valuation of properties of industrial enterprises within the State, and of necessity had to form its valuation of the properties of these companies without having this information and by making the best use that it could of other information furnished by these companies and information furnished by these companies and information on file with and in the records of the North Carolina Corporation Commission.

One of the evidences of value submitted for consideration, by each of these companies was what is technically known as "investment accounts" of these companies, not within the State of North Carolina, but throughout the entire systems of Railroads owned by them in many states other than North Carolina; and it was insisted by them that the proportion of their total investment account which their main line mileage within the State of North Carolina bore to the total main line mileage of each of these several railway systems throughout the several states in which they operated would give a fair value of the property of such companies within the State of North Carolina, except that it was insisted that they had larger and more expensive terminal facilities outside the State of North Carolina than they had at any one point within the State of North Carolina, and that for this reason the straight mileage proportion of their investment account would be more than a fair proportion for this State.

155 The State Tax Commission was not able to agree with them that this method would fairly determine the value of their properties within the State of North Carolina, for that, first, their investment accounts represented investments made in the properties going back through a long period of years to their original organizations, and such investment having been in a large part made in years when the general price level of materials, commodities and labor was very much lower than the price level for materials, commodities and labor was on May first 1919; and for that, second, a straight mileage proportion of their lines did not, in our opinion, accurately or fairly represent the actual value of the properties of either the Southern Railway Company, the Atlantic Coast Line Railroad Company or the Seaboard Air Line Railway Company within the State of North Carolina, the lines of these companies within North Carolina having, in our opinion, a much greater value than an average based upon the mileage for their entire systems, in that they have a larger proportion of double track main line mileage in North Carolina than for their entire systems, and in that both the gross and net earnings of each of these railway lines within the State of North Carolina is much greater than the average gross and net earnings per mile for their entire systems. All of this was duly considered by the Commission in proportioning, dividing and determining the valuation of the property of the said railroads in North Carolina as provided by law.

For the year 1918, the last calendar year prior to the first day of May 1919, the excess net operating revenue per mile within the State of North Carolina of each of these railway companies in excess of the net operating revenue per mile for their entire systems, stated in percentages as shown by their reports on file with the Corporation Commission, was as follows:

156 Southern Railway Company 50.48;
Atlantic Coast Line Railroad Company 19.75;
Seaboard Air Line Railway Company 250.01.

A satisfactory estimate of value could not be made based upon the market value of the stocks and bonds of these companies on the first day of May 1919, for the reason that the limited market and the limited number of shares and bonds sold on the market did not furnish, in our judgment, a fair index of the actual value of these properties as a whole, and more particularly did not furnish an index of the actual value of the properties of these companies located within the State of North Carolina for the reasons hereinbefore stated; nor was it considered that the actual value of these properties could be fairly determined by their earnings, until there should be a fair return to normal conditions of operating costs, flow of traffic and stabilization of transportation rates.

For the reasons hereinbefore set out the valuation finally made or determined by the State Tax Commission of the properties of each of these railway companies within the State of North Carolina as of the first day of May 1919, was not made with the sole and exclusive relation to any one element or indicia of value, but after due and proper consideration of all of them and upon the best knowledge and information obtainable by the Commission.

The members of the Commission have for years been actively engaged in the matters of valuation for rate making and taxation purposes in North Carolina and are acquainted with property values of railroads in the State and in assessing the properties of the plaintiffs the Commission gave due consideration to all factors and methods prescribed by the law governing such valuations and the values of said properties as fixed and determined by the Commission as of the first day of May 1919, were, in the opinion of affiants, fair, just and reasonable.

As to the properties of the Southern Railway Company in the State of North Carolina, a valuation of $111,308.325 was
157 made, which was in fact the proportion of the investment account of the Southern Railway Company which the gross earnings of that company within the State of North Carolina bore to the total gross earnings of the Southern Railway Company for the entire system. Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960.416, which was in fact the amount which the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis or theory of six per cent, would have produced.

In general the same method was followed in fixing the valuation of the total properties in the State of the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railroad Company, and the Norfolk and Southern Railroad Company. In each case the basic consideration was the cost of reproduction value, less depreciation, which, in the absence of correct reports of such values by the railroads as they were required by law to furnish and which were duly called for by the Commission, was arrived at as accurately as possible by a consideration of the investment account. In each case a tentative cost of reproduction value was found in this way, which, except in the case of the Norfolk and Southern, was in excess of the

assessment as finally arrived at. In the case of the Norfolk and Southern this investment account, or cost of reproduction, value was the same as the final assessment and that railroad made no application to the Commission for rehearing on that assessment and took no exception thereto. In the case of the other railroads, a consideration of capitalization of net income and of the other factors which the Tax Commission was authorized by law to consider led to the reduction of this investment account, or cost of reproduction, value to the valuation fixed as the final assessment.

After the assessments of the properties of the plaintiffs had been arrived at by the Tax Commission pursuant to the Revalua-
158 tion Act (Public Laws of 1919, Chapter 84) the Commission as required by law, made report of its action and valuation to the General Assembly of North Carolina and thereupon, in the special session of 1920 the General Assembly, by Chap. 1, Public Laws, Extra Session 1920, specifically approved said valuations as correct and adopted them as and declared them to be the basis for taxation for the years 1920-1923 inclusive, except as such valuations should be thereafter changed according to law. And the affiants are informed and believe and so aver that the said valuations, so made by the Commission and reported to the General Assembly and approved and adopted by it, have remained and still are the basis for taxation of the said railroads in North Carolina except in so far as they have been modified or changed by the Commissioner of Revenue upon application made to him by the said railroads for review as provided by law.

As to the tentative values of the engineers of the Interstate Commerce Commission, referred to by the plaintiffs in these suits as being proper indices of the correct valuation of their total properties in North Carolina, the said tentative values were arrived at upon the basis of an inventory of the railroads' properties as of the date of June 30, 1914. The affiants state of their own knowledge that the said prices prevailing in 1914 as to material labor, and all costs of railroad construction, were abnormally low, that since that time such prices have greatly increased, and that in 1919 and in 1920 the said prices of labor, materials, and all things going into the construction of railroads were very much higher than those of 1914 upon which the said tentative figures of the Interstate Commerce Commission were based. In the opinion of the affiants the said tentative figures in no way furnish a proper index or test of the value of the properties of railroads in North Carolina in 1919 and 1920.

It was the purpose of the State Tax Commission in valuing
159 the property of transportation companies and other companies exercising the right of eminent domain, and in the supervision of the valuation of all other property by local assessing officers, to carry out and to have carried out what the State Tax Commission understood to be the general purpose of Chapter 84 of the Public Laws of 1919, that all property of every class should be fairly and equally valued at its actual value, and in evidence that no injustice was done to the Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Rail-

road Company and the Norfolk-Southern Railroad Company, there is attached hereto a copy of the report of the State Tax Commission to the Special Session of the General Assembly of 1920, showing, by comparison, the valuation of 1920 compared with the former valuation of each of the several different classes of properties within the State of North Carolina and showing that the increase in valuation of all railroad property within the State of North Carolina was 99 per cent; of real property 296 per cent; and of all property of all classes within the State 194 per cent.

W. T. LEE.
A. J. MAXWELL.
GEORGE P. PELL.

Sworn to and subscribed before me this January 21, 1922.
[SEAL.] W. H. PITTMAN,
Notary Public.

My commission expires July 29, 1922.

160 *Affidavit of A. J. Maxwell.*

Filed January 23, 1922.

ATLANTIC & YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

Affidavit of A. J. Maxwell.

A. J. Maxwell being first duly sworn, deposes and says:

He is a member of the North Carolina Corporation Commission and was a member of the former State Tax Commission of North Carolina. He has read the affidavit filed by Murray R. Hubbard in the above entitled suit. It was agreed between the affiant and Mr. Griffin and the said Murray Hubbard, Tax Commissioner of the Southern Railway System, that the said Murray Hubbard should take the total assessment of $101,960.413 and work out an apportionment of this total assessment among the different lines of the Southern Railway System in North Carolina, and Mr. Hubbard took the said assessment with him to Atlanta and worked out his own suggestion as to how it should be apportioned which suggestion he then transmitted to the State Tax Commission in the letter, a copy whereof is hereto attached and marked Exhibit A. As alleged in the answer of the defendants in the above entitled suit, the assessment of the properties of the Atlantic and Yadkin Railway Company made by the Tax Commission for the year 1920 was simply an adoption of this apportionment worked out and suggested by Mr. Hubbard. It was a suggested apportionment prepared and submitted

by him as Tax Commissioner and representative of the Southern Railway System. It was not determined by the affiant nor by Mr. Griffin, but was adopted by the Tax Commission.

A. J. MAXWELL.

Sworn to and subscribed before me this 20th day of January 1922.

[SEAL.] W. H. PITTMAN,
Notary Public.

My commission expires July 29th, 1922.

161 *Affidavit of Stedman Thompson.*

Filed January 23, 1922.

ATLANTIC & YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue.

Affidavit of Stedman Thompson.

Stedman Thompson being first duly sworn, deposes and says:

That he was Tax Clerk to the Tax Commission of North Carolina during the year 1920 and had been in its employment for several years prior thereto; that he has read the foregoing affidavit of A. J. Maxwell, and the matters stated by him therein are in accord with affiant's recollection of what occurred between Mr. Hubbard and the Tax Commission of North Carolina. He has read the affidavit filed by Mr. Hubbard.

O. S. THOMPSON.

Sworn to and subscribed before me this 20th day of January, 1922.

[SEAL.] W. H. PITTMAN,
Notary Public.

My Commission expires July 29, 1922.

162 Southern Railway Company.

Suggested Distribution of North Carolina Assessment.

AT&O	45.29 Mi. @	$89,251.99...	$4,042,222.63
CC&A	11.48 Mi. @	89,251.99...	1,024,612.85
WNC	185.50 Mi. @	89,251.99...	17,556,244.15
Do. Murphy Br.	122.52 Mi. @	89,251.99...	10,935,153.82
NWNC	100.15 Mi. @	89,251.99...	8,938,586.80
OXF & CLKV.	49.33 Mi. @	89,251.99...	4,402,800.67
OXF & H.	12.75 Mi. @	89,251.99...	1,137,962.87
Statv. & WN.	20.36 Mi. @	89,251.99...	1,817,170.52
Sel. Pinners Pt.	121.46 Mi. @	5,000.00...	607,300.00
Asbe. & Sptbg.	41.90 Mi. @	51,321.53...	2,150,372.11
ATL.&DAN.	22.00 Mi. @	20,735.97...	456,191.34
H&SC.	3.73 Mi. @	6,844.43...	25,529.73
NC MIDL	53.52 Mi. @	46,757.24...	2,502,447.49
SC& G Ext.	64.03 Mi. @	11,328.22...	725,345.93
State UNIV.	10.14 Mi. @	6,842.45...	69,386.60
TRANSYL RR.	41.67 Mi. @	13,599.24...	566,680.33
ATL & YAD.	161.08 Mi. @	25,482.43...	4,104,709.83
HPRA& SO.	26.78 Mi. @	25,720.87...	688,894.90
Yadkin RR	41.00 Mi. @	13,685.70...	561,113.70
A & CAL.	42.85 Mi. @	138,089.67...	5,917,142.36
Piedmont RR	42.70 Mi. @	138,089.67...	5,896,428.91
NC RR (Dbl. Trk)	93.20 Mi. @	138,089.67...	12,869,957.24
NC RR (Sgl. Trk)	130.00 Mi. @	115,108.91...	14,964,158.22
Total			$101,960,413.00

163 Southern Railroad Company.

Atlanta, Ga., July 21, 1920.

My Dear Mr. Griffin:

Enclosed herewith I am sending you statement showing distribution of the assessment that seems to me fairest under all the circumstances and perhaps best calculated to maintain a proper relation between the old and the new assessments.

The method pursued was to determine the increased percentage between the old and the new assessment and to apply that percentage of increase to the so-called "Owned Lines" (except Piedmont) and to all the other lines of less importance. This method left for distribution, over the double track lines and the Goldsboro line, a total of $39,647,688.73. As there are 308.75 mi. of road, this gave a value of $128,089.67 per mile It occurred to me that the double track line should have arbitrarily assigned to it a value of $10,000 above the average, and so I have figured the Air Line, North Carolina Railroad double track and the Piedmont at $138,089.67. This left for distribution between Greensboro and Goldsboro a value per mile of $115,108.91.

The only other arbitrary distribution involved in my method is the assignment of $5,000 per mile for rolling stock on the Selma-Pinners Point line and the per mile value fixed for High Point. This road is almost helpless and I assigned to it an arbitrary increase of $12,000 per mile instead of applying the increased percentage.

If you feel that any of these values are too high, I would suggest that it would be entirely proper to give a further arbitrary increase to the North Carolina Midland and to the Atlantic & Yadkin in order to absorbe any reduction on the double track line. You understand, of course, that I am not wedded to this distribution and am making same only as a suggestion and for the purpose of affording you all possible assistance.

Our train was delayed by wash-outs and was seven hours late reaching Atlanta, but I am taking up vigorously the localized property assessments and will use every effort to get them to you as soon as possible. I will advise by wire which will reach you before this letter.

Very sincerely,

(Signed) MURRAY R. HUBBARD,
Tax Commissioner.

163½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue. et al.

Further Affidavits Filed January 24, 1922, in Support of Plaintiff's Application for Interlocutory Injunction.

S. R. Prince,
Solicitor for Plaintiff.

L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
Of Counsel.

164 *Affidavit of Murray R. Hubbard.*

Filed Jany. 24, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Affidavit of Murray R. Hubbard.

STATE OF NORTH CAROLINA,
County of Guilford:

Before me, R. L. Blaylock, Clerk, U. S. District Court, Western District of North Carolina, personally appeared Murray R. Hubbard, who, being by me first duly sworn, on oath says:

(1) That the statement in the affidavit of the members of the former State Tax Commission to the effect that Southern Rail-
165 way Company submitted as an evidence of its true value its investment account and insisted that the proportion of its total investment account which its main line mileage within the State of North Carolina bore to the total main line mileage would give a fair value of the property of Southern Railway Company, except valuable terminals outside of the State, is incorrect; on the contrary, he insisted orally and in brief before the State Tax Commission and again before the Commissioner of Revenue that the Southern Railway Company's investment account was not a true index of the value of its property in North Carolina for tax purposes, and that he is the only person who submitted any facts or made any statement before the Tax Commission on behalf of Southern Railway Company.

(2) That he, as representing Southern Railway Company, furnished to the Commission, in response to its demand, a mass of detailed information as to the cost of reproduction of the properties of this Company in the State of North Carolina; said statements were correct and accurate as to the rolling stock and equipment. It was stated that as to the physical value of the property, other than rolling stock, that was as complete as the limited time given Southern Railway within which to prepare the same permitted. He is able to set out at this time that the values presented in said accounts approximated the values now given out by the Bureau of Valuation of the

Interstate Commerce Commission in their tentative report, as set forth in the bill filed in this case; that upon filing the same
166 the Tax Commission declined to consider it, stating that it was worthless for the purpose furnished.

(3) That he attaches hereto a classification of accounts prescribed by the Interstate Commerce Commission and followed by the Southern Railway Company in the keeping of its books and accounts. He has been furnished by the Accounting Department of Southern Railway Company with the actual results of operations for ten months and the estimated result for two months of the year 1921; that if the amount upon which the income tax in North Carolina is to be paid is arrived at in accordance with the income tax law, the amount of said tax to be paid by the Southern Railway Company for the year 1921 will approximate $78,000.00; that if the amount upon which said income tax for the State of North Carolina is based is the net income as the same is arrived at by following the Interstate Commerce Commission's classification of accounts, the tax to be paid for the year 1921 will approximate $8,000.

(4) That he has for and on behalf of Southern Railway Company paid during the year 1921 on the agreed assessed value of sixty million dollars to the Counties, cities, towns, and school districts within the State of North Carolina the total sum in taxes of $688,163.75. That the Southern Railway Company paid in the year 1920 in taxes to the said Counties, cities, towns, and separate school districts the total sum of $652,900.49. In other words, due
166½ to increase in tax rates, the Southern Railway Company has already paid on the sixty million dollar assessment the sum of $35,263.26 in excess of the amount paid in 1920 on the assessment of ninety-six million dollars; that the sum paid in 1921 will be increased by tax bills submitted by several Counties, cities, towns, and school districts, which have not been paid due to discrepancies therein, an added sum of $26,714.22; that the sum the Southern Railway Company will be required to pay if the ninety-six million dollar assessment remains will amount to $1,243,715.97. In other words, the actual increase in taxes paid and to be paid over the year 1920 on the ninety-six million dollar assessment, if that remains, will be the sum of $368,622.38.

(5) That the Atlantic and Yadkin Railway Company has paid to Counties and municipalities for the year 1921 on the agreed assessment of $1,975,806.00 the sum of $22,086.18, whereas in 1920 it paid on an assessment of $4,104,710.00 the sum of $26,423.95. The reason for the amount paid in 1921, notwithstanding the reduced assessment is the very marked increase in tax rates. If the assessment of $4,104,710.00 remains, the Atlantic and Yadkin Railway Company will pay total taxes of $50,091.50.

(Signed) MURRAY R. HUBBARD.

Subscribed and sworn to before me this 24th day of January, 1922.

(Signed) R. L. BLAYLOCK,

[SEAL.] *Clerk U. S. District Court.*

167 *Affidavit of A. H. Plant.*

Filed Jany. 24, 1922.

DISTRICT OF COLUMBIA,
City of Washington:

Before me, Harry K. Pimper, a Notary Public in and for said District, personally appeared A. H. Plant, who, being by me first duly sworn, on oath states:

That he is now and since March 1, 1920, has been Assistant to President of Southern Railway Company. From January 1, 1898, to June, 1918, he was the executive accounting officer of Southern Railway Company. From June, 1918, to February 29, 1920, he was Federal Auditor for the United States Railroad Administration and as such directed the accounting for operations of Southern Railway Company's properties, which, during that period, were operated by the United States Railroad Administration.

That as such executive accounting officer of Southern Railway Company, he formulated and prescribed the accounting methods of the said Railway Company and directed and supervised its accounts in accordance with such methods as were formulated and prescribed by him.

That under the accounting rules so prescribed, the actual revenues derived from intrastate freight and passenger traffic within a given State can be and are determined, and that revenues derived
168 from mail, express, and miscellaneous traffic can be apportioned with a fair degree of accuracy as between intrastate and interstate.

That on such bases of accurate accounting and fairly accurate apportionment, the intrastate revenues within the State of North Carolina for the year ended December 31, 1920, were:

Freight	$3,029,323.99
Passenger	4,228,000.88
Mail	597,289.01
Express	368,556.00
Miscellaneous	335,219.37
Total	$8,558,389.25

That it has been found impossible, except at a prohibitive cost, to apportion in like manner operating costs to the two classes of traffic; that is to say, operating costs and taxes to do intrastate business and operating costs and taxes to do interstate business. Therefore, no effort has been made in the past to currently set up or apportion operating expenses and taxes separately to the two classes of traffic. On the other hand, under the accounting rules prescribed by him, operating expenses are assigned to each State, including the State of North Carolina, as a whole.

That upon such assignment it was found for the year 1920 that the cost to operate in North Carolina per dollar of both intrastate and interstate revenues earned within the State was 78.08
169 cents. This 78.08 cents, however, does not fully represent the cost to earn a dollar of revenue within the State because the expenses incurred within the State are not charged with certain elements of costs incurred outside of the State which are properly chargeable to the revenues earned within that State.

That on various and sundry occasions it became necessary to determine as accurately as possible the operating costs to earn a dollar of intrastate revenue within the borders of certain States, among them the State of North Carolina. In order to do this, it became necessary to place on each train a special agent or auditor who made careful examination of each individual transaction handled by the trains and to set each transaction out and apply to it the cost incurred in handling such traffic. These examinations were made for the purpose of fixing as accurately as it could be fixed the relative costs per dollar of revenue on the two classes of traffic. The costs for this work exceeded something over $18,000.00 per month. The result of it was that it was found, not only in the State of North Carolina, but in other States, that the cost to earn a dollar of intrastate revenue within a given State was at least fifteen cents greater than the cost to earn a dollar of revenue on both intrastate and interstate traffic. So that, if the aggregate cost to earn a dollar of both intrastate and interstate traffic in North Carolina be 78.08 cents, the cost to earn a dollar of intrastate revenue would be not less than 93.08 cents.

170 That by applying this per dollar cost of 93.08 cents to the total intrastate revenues earned within the State, namely, $8,558,389.25, would produce as a minimum intrastate expense, including taxes, within the State of North Carolina for the year ended December 31, 1920, $7,966,148.71, leaving as net from intrastate traffic within that State for the year before mentioned $592,240.54.

(Signed) A. H. PLANT.

Subscribed and sworn to before me this 20th day of January, 1922.

(Signed) HARRY K. PIMPER,

[SEAL.] *Notary Public, District of Columbia.*

171 *Affidavit of L. H. Skinner.*

Filed Jany. 24, 1922.

DISTRICT OF COLUMBIA,
City of Washington:

Before me, Harry K. Pimper, a Notary Public in and for said District and City, personally appeared L. H. Skinner, who, being by me first duly sworn, on oath states:

That he is at this time Purchasing Agent of Southern Railway Company and has been connected with the Purchasing Department

of said Railway Company for sixteen years; that as such Purchasing Agent and through reports of other branches of the Purchasing Department of Southern Railway Company he has been and is familiar with the prices paid by Southern Railway Company for its materials and supplies.

That he attaches hereto a statement of the principal articles purchased by Southern Railway Company, which statement shows the unit prices of said articles May, 1920, compared with May, 1921; that a composite percentage of said articles and prices shows an average percentage of reduction May, 1921, under May, 1920, of 35 per cent.

That he has examined the Iron Age, a recognized publication, which set- forth monthly an annual composite price list of iron and steel articles; that the Iron Age for January 5, 1922, on page 60, shows a composite price for pig iron for May, 1920, to have been
$43.64 per ton, and the like figure for May, 1921, to have
172 been $22.78 per ton, or a percentage reduction of 47 per
cent plus; that the said Iron Age of January 5, 1922, sets out the composite prices of finished steel products, which includes quotations on steel bars, beams, tank plates, plain wire, open-hearth rails, black pipe, and black sheets, in cents per pound to have been for May, 1920, 3.804, and for May, 1921, 2.764, or a percentage of reduction May, 1921, under May 1920 of approximately 27½ per cent.

That the foregoing figures taken from the Iron Age bear out and corroborate the percentage of reduction given by him above on actual purchases made by Southern Railway Company.

(Signed) L. H. SKINNER.

Subscribed and sworn to before me this 19th day of January, 1922.

[SEAL.] (Signed) HARRY K. PIMPER,
Notary Public, District of Columbia.

173 *Memorandum of Prices for Materials Purchased by Southern Railway Company During May, 1920, and May, 1921.*

Description.	Unit of price.	Price May, 1920.	Price May, 1921.
Roadway Materials:			
Steel Rails (open hearth)	Gross Ton	$47.60	$47.60
Track Spikes	Per Cwt	4.15	3.33
Track Bolts	"	5.25	4.15
Rail Joints (Weber 85 lb.)	Each	2.83	2.74
Spring Frogs (No. 19, 85 lb.)	"	128.60	92.30
Rigid Frogs (No. 10, 85 lb.)	"	80.76	59.40
Switches, Complete (85 lb.)	"	106.25	75.75
Switch Points (85 lb.)	"	52.35	42.20
Switchties, Oak	Per M Ft. BM	45.00	19.00
Switchties, Pine	"	50.00	18.75
Crossing Plank, Oak	"	50.00	30.00
Crossties	Each	1.33	.77

Description.	Unit of price.	Price May, 1920.	Price May, 1921.
Bridge & Building Material:			
Bridge Ties & Guard Rail Pine, 8x10x11, 8x8x22	Per M Ft. BM	51.00	18.25 (E)
Stringers, Pine, 7x16x27	"	75.00	25.75 (E)
Sills & Posts, Pine—			
12x12x13' to 20'	"	57.56	21.25 (D)
12x12x22' to 30'	"	60.56	22.50 (D)
Bracing Pine, 3x10x24' to 30'	"	59.00	19.25 (E)
Creosoted Pine Lumber	"	89.50 (B)	49.25 (E)
Creosoted Pine Piles	Per Lin. Ft.	.56¾ (A)	.28
Shop Materials:			
Rolled Steel Coach Wheels (33").	Each	48.00	44.75
Locomotive Tires (rough bored).	Per Cwt.	6.85	5.85
Springs (Coil)	"	5.15	3.90
Springs (Elliptic)	"	7.15	5.90
Car Couplers (5x7 base)	Per Pair	47.55	39.05
Steel Bars	Per Cwt.	2.60	2.35
Steel Shapes	"	2.70	2.45
Steel Plates	"	2.80	2.45
Brass Castings	"	25.80	18.35
Journal Bearings	"	19.265	13.75
174 Malleable Castings (average)	"	12.00	8.80
Grey Iron Castings	"	3.90	4.25
Steel Castings (average)	"	7.00	8.25
Fuel Oil (in tank cars)	Gallon	.1057	.0393
Shop Oak	Per M Ft. BM	45.00	19.75
1" Boards, Pine	"	46.73	15.93 (D)
Car Sills 5½x9½x40' Pine	"	52.13	20.50 (C)
Car Siding	"	105.00	27.25
Car Lining & Roofing	"	68.75	21.50
Car Docking	"	48.00	17.90
Train Materials:			
Valve Oil (in tank cars)	Gallon	.655	.5625
Car Oil (in tank cars)	"	.335	.2475
Signal Oil (in barrels)	"	.70	.50
Illuminating Oil (in tank cars)	"	.16	.065
Packing Waste	Per Cwt.	18.00	9.00

Where we did not make purchase of material in May the prices shown are based on month of nearest purchase.

(A) Based on June, 1920 price.
(B) " " August, 1920 price.
(C) " " April, 1921 price.
(D) " " June, 1921 price.
(E) " " July, 1921 price.

175 *Affidavit of B. M. Rogers.*

Filed January 24th, 1922.

STATE OF NORTH CAROLINA,
County of Alamance, ss:

Affiant B. M. Rogers, says that he is Register of Deeds for Alamance County, and has been a resident of Alamance for years; that he has made an examination of all deeds recorded in Alamance County, from January 1, 1921, to June 30, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000.00) and also of the assessed value of the real estate embraced in said deeds for the year of 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the consideration shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: From the amount of the Federal Tax imposed and entered on the record, viz: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents; and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $517,606.00 and that the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $355,184.00. The statement is hereto attached, marked Exhibit "A."

B. M. ROGERS,
Affiant.

Subscribed and sworn to before me this 10th day of January, 1922.

MIRIAM WILLIAMS,
Notary Public.

My Commission expires 11/22/22.

Date of conveyance, month, day.	Grantor.	Grantee.	Jan. 1, 1921-June 30, 1921, consideration.		1921 assessed value.
5/1	A. E. Sykes	A. H. Fogleman	$6,000		$6,050
5/23	J. R. McNally	Flora Joyner	2,375		1,275
4/30	L. R. Blanchard	Real Est. Ins. Co.	3,770		3,953
5/24	Pleasant Dixon	John M. Baker	1,995		2,280
5/20	H. F. Mitchell	John F. Thompson	5,500	s	4,250
5/11	T. B. De Loach	Julia L. Deloach	4,000		4,000
6/4	W. B. Bowen	D. B. Wagoner	3,500		4,250
3/7	H. Glen Holt	R. A. Sharpe	2,600		2,125
6/1	J. L. Kernodle	O. H. Chaplin	5,000	s	2,175
6/23	C. B. Riddle	Mebane Real Est. & Trust Co.	5,000	s	3,000
6/4	S. G. Foster	J. M. Crutchfield	3,000		2,500
6/13	W. H. Kirkpatrick	E. T. Horne	2,000	s	1,800
6/28	Jno. W. Glosson	W. D. Bowman	1,700		765
5/30	H. T. Sharpe	S. C. Jones	2,000	s	1,403
6/20	G. B. Prickett	Stella Loy	1,800		2,720
1/10	Jno. A. Trollinger	Wm. Carter	1,567		1,424
6/4	J. M. Crutchfield	S. T. Foster	2,000		1,700
2/16	R. D. Farrell	Ala. Motor Co.	1,025		829
3/26	F. L. White	M. B. Miles	1,100		500
3/5	W. A. Cash	A. G. Ansley	2,500	s	2,338
6/28	C. M. Teer	Ala. Ins. & R. E. Co.	4,000	s	3,500
5/25	Jas. Brown	W. A. Clapp	1,750		1,530
4/30	J. T. Dick	Jno. R. Smith	2,000	s	2,550

EXHIBIT "A"—*Continued.*

Date of conveyance, month, day.	Grantor.	Grantee.	Jan. 1, 1921-June 30, 1921, consideration.		1921 assessed value.
5/14	J. R. Smith	Endora C. Smith	1,000		340
3/14	C. E. Tate	Effie A. Tate	3,500		2,965
2/1	Mebane R. E. & T. Co.	C. B. Riddle	5,000	s	3,000
2/12	" "	Alice M. Bowland	9,500		6,000
2/22	" "	Garland Hoffman	5,000	s	3,400
2/22	Ala. Ins. & R. E. Co.	C. M. Friddle	3,500		2,125
3/3	Mebane R. E. & T. Co.	Jno. A. Trollinger	30,000	s	14,760
2/1	Ala. Ins. & R. E. Co.	H. T. Baldwin	2,500		1,800
3/18	Mebane R. E. & T. Co.	J. H. McLeod	14,000	s	8,000
3/15	" "	Ben. F. Smith	3,000	s	2,288
3/15	" "	Kirkman P. & H. Co.	4,500	s	3,000
3/23	" "	B. B. Vaughn	10,000	s	5,950
3/29	Ala. Ins. & R. E. Co.	Dora I. Hinshaw	4,500		2,762
4/1	Mebane L. & M. Co.	Jas. S. Cheek	1,248		1,020
1/4	Ala. Ins. & R. E. Co.	H. B. Hunter	8,000	s	7,000
2/28	Real Est. & Ins. Co.	J. G. Levey	9,600		5,984
4/8	Ala. Ins. & R. E. Co.	B. F. Thornton	2,705		2,300
4/1	" "	W. P. Fowler	1,750		1,500
2/28	Real Est. & Ins. Co.	David R. Barber	1,250		912
5/12	Mebane R. E. & T. Co.	W. H. Trollinger	5,500	s	3,957
3/11	Ala. Ins. & R. E. Co.	C. C. Howard	9,000		850
6/8	Sta. R. & S. Co.	F. B. Carboy	3,500		3,500
6/6	Mebane R. E. & T. Co.	Margaret Clegg	13,000		5,525

6/11	Ala. Ins. & R. E. Co.	Jennie L. Lasley	1,425		1,200
1/1	Mebane R. E. & T. Co.	W. B. Bowman	5,000	s	4,250
6/24	Standard R. & S. Co.	B. W. Everett	1,500	s	1,500
6/24	Ala. Ins. & R. E. Co.	W. P. Lawrence	1,875		2,100
6/7	" "	C. W. Whitt	2,725		2,125
5/25	" "	R. L. Self & A. T. Thompson	1,250		1,000
5/5	" "	H. & C. A. Hughes	5,000	s	7,228
1/20	Mebane R. E. & T. Co.	C. F. Bradshaw	2,000	s	1,800
1/20	Standard R. & S. Co.	F. W. Moore	8,000	s	6,750
1/22	A. L. Fuquay	Jno. A. Murchison	7,000		3,396
177					
1/15	Harden & May	W. E. Payne	1,295		1,063
1/29	A. L. Pickard	——— ———	2,500	s	2,150
1/31	Beulah Allen	Ruth Hinshaw	1,000	s	528
1/1	J. H. Holt	A. B. Fitch	1,000		3,825
1/15	S. G. Morgan	Jno. H. Mebane	1,500	s	1,500
1/31	P. L. Cooper	B. Goodman & I. I. Levine	6,500		3,825
1/17	M. M. Gerringer	J. L. Jackson	3,750		2,040
2/4	J. W. Johnston	R. W. Traynham	2,500	s	3,500
2/12	L. C. Jordan	T. F. Carden	1,000		595
2/14	Robt. Montgomery	A. W. Hedgepeth	2,700		1,020
2/19	C. M. Euliss	R. Simpson	3,500		850
2/21	C. O. Smith	Peter Hughes	5,000		4,380
2/18	C. Martindale	Eli Abee	1,000		850
2/19	R. Simpson	Gile & Shepherd	2,500	s	2,550
3/7	B. D. Guthrie	T. A. Murphy	2,850		1,700
3/1	Thos. A. Smith	D. B. Moore	3,000		1,913
3/7	H. L. Graves	W. N. Thompson	1,200		1,250

EXHIBIT "A"—*Continued.*

Date of conveyance, month, day.	Grantor.	Grantee.	Jan. 1, 1921-June 30, 1921, consideration.		1921 assessed value.
2/21	J. G. Pritchett	Mebane R. E. & T. Co.	5,500		2,600
3/11	R. A. Coble	P. A. Sharpe	3,525		1,678
3/12	T. B. Deloache	S. W. Caddell	1,300		1,000
3/15	W. S. Crawford	T. C. Phillips	1,500		1,400
3/9	R. W. Malone	Mebane R. E. & T. Co.	2,250		1,318
3/7	R. M. Morrow	Nat'l R. C. Co.	13,000		12,750
3/29	Chas. A. Hinshaw	Ala. Ins. & R. E. Co.	2,300		2,000
4/1	J. H. McLeod	S. G. Morgan	1,500		1,000
2/28	J. E. Carrigan	W. J. Graham	12,000		7,750
4/1	James G. Holt	Stan. R. & S. Co.	1,500		1,000
1/11	M. R. Kirkman	E. T. Sharpe	2,000		1,360
2/5	A. L. King	L. Tillman	2,500		1,700
4/25	C. O. Smith	John H. Jordan	4,564		4,380
4/24	John A. Ireland	W. E. Herndon	1,200		850
4/25	Dora Lineberry	E. T. Horne	2,000		1,500
1/29	John A. Barnwell	David R. Haith	6,000		3,613
5/5	C. E. Tabscott	Ed. W. Ross	6,000		5,856
5/3	W. E. White	White Furn. Co.	5,000		4,500
5/14	A. D. Tate	James H. Rich	1,500	s	1,025
3/11	J. W. Fix	Addie Ray Boone	15,700		10,000
3/31	Dixie Milling Co.	Dr. J. L. Kernodle	7,000		6,373
4/7	Ala. Ins. & R. E. Co.	Mebane R. E. & T. Co.	7,500		4,000
4/1	J. T. Albright	Bessie Foust	4,200		3,400

3/16	Luco Loyd	Susan Crawford	2,250		4,637
5/12	Mrs. Lucy J. Holmes	A. D. Tate	5,500		5,000
5/2	J. W. Page	M. B. Lindsay	27,000		9,775
5/26	J. M. Fix	A. E. Sykes	1,712		1,200
4/28	D. V. Quakenbush	Nettie Oldham	3,500	s	2,500
2/18	O. J. Paris & A. M. Hadley	C. E. Coggins	3,500		2,550
6/11	N. C. Railroad Co.	Stan. R. & S. Co.	60,000		30,600
6/20	Graham R. E. Co.	Ala. Ins. & R. E. Co.	1,000		1,200
4/15	J. Dolph Long	E. B. Huffine	3,600		5,100
3/1	Central L. & T. Co.	H. Frank Mitchell	1,700.00		808
		Total	$170,426.00		$108,867.00

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Columbus	L. V. Grady	228,820.00	167,222.00	73.08
Craven	Wm. Dunn, Jr.	379,831.66	310,610.00	81.77
Cumberland	E. L. Hall	414,122.03	270,615.00	65.35
Currituck	P. G. Sawyer and M. B. Simpson	108,781.86	72,210.32	66.37
Dare		.....	.....	....
Davidson	W. H. Phillips	478,760.00	258,653.00	54.02
Davie	J. S. Daniel	35,438.00	28,308.00	79.88
Duplin	H. L. Stevens	87,165.00	62,250.00	71.41
Durham	M. G. Markham	492,250.00	336,532.00	68.40
Edgecombe	J. L. Bridgers	209,382.24	133,055.00	63.00
Forsyth	Phillip L. Kainer, R. G. Parker, C. A. Vogler	139,311.57	1,526,368.70	71.34
Franklin	Hugh W. Perry	75,458.29	43,472.00	57.60
Gaston	Cecil C. Cornwell	202,167.00	136,974.00	67.70
Gates	P. L. Hoffler	133,575.00	84,760.00	63.45
Graham	A. H. Eller	39,904.50	17,486.00	43.82
Granville	C. G. Powell	272,387.87	141,930.00	52.10
Greene		.....	.....	....
Guilford	John H. McAdoo	2,337,104.00	1,627,041.00	69.61
Halifax	R. C. Dunn	237,303.50	125,777.50	54.69
Harnett	J. C. Clifford	116,685.00	70,045.00	60.03
Haywood	T. Troy Wyche	221,720.83	129,342.00	58.33
Henderson	Mrs. J. E. Bishop	678,562.05	591,194.05	87.00

180	Hertford	J. E. Vann	100,226.00	67,268.00	67.12
	Hoke	Oscar Leach	24,042.25	22,325.00	92.85
Hyde		Elmo Mann	84,712.50	60,905.00	71.90
Iredell		John L. Millholland	224,435.00	155,250.00	69.17
Jackson		Raymond R. Nicholson	190,967.00	44,125.00	23.10
Johnston		E. F. Ward	382,507.56	224,047.25	58.57
Jones		John R. Barker	204,486.00	117,763.00	57.58
Lee		D. E. Melver	90,027.00	74,457.00	82.70
Lenoir		C. W. Pridgen	212,579.06	191,465.00	90.06
Lincoln		John E. Hoover	217,764.00	111,146.00	52.40
Macon		J. F. Ray	32,275.00	19,775.00	61.26
Madison		J. Will Roberts	29,780.00	18,327.00	61.54
Martin		H. W. Stubbs	623,064.03	238,679.00	38.31
McDowell		H. R. Ledbetter	93,675.00	54,480.00	58.16
Mecklenburg		Geo. M. Phifer	3,169,115.25	1,815,279.50	57.28
Mitchell		J. D. Pannell	93,991.00	65,056.00	69.21
Montgomery		W. L. Wright	244,638.00	158,764.00	64.89
Moore		N. A. McKeithen	210,678.00	119,410.00	56.70
Nash		J. P. Bunn	361,740.43	165,891.00	45.85
New Hanover		Wm. L. Smith	989,207.00	866,550.00	87.60
Northampton		P. F. Calvert	54,848.00	48,620.00	88.64
Onslow		Frank Thompson	82,418.00	75,475.00	91.46
Orange		J. F. McAdams	162,269.00	120,706.00	74.38
Pamlico		G. V. Rawls	41,150.00	15,556.00	37.80
Pasquotank		P. G. Sawyer and M. B. Simpson	188,681.15	126,778.00	67.14
Pender		J. T. Bland	90,000.00	64,885.00	72.90
Perquimans		W. F. C. Edwards	95,002.00	87,775.00	92.39
Person		A. P. Clayton	59,124.00	45,570.00	77.07

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Pitt	C. F. Manning — J. C. Gaskins	459,976.50	383,157.00	83.00
Polk	W. C. Hague	40,743.20	28,929.00	71.00
Randolph	John M. Brittian	235,365.00	135,150.00	57.42
Richmond	H. V. Guthrie	80,070.00	55,610.00	69.40
Robeson	Wade Wishart	119,272.00	68,004.00	57.00
Rockingham	Nurna Winstead	815,821.00	524,584.00	64.30
Rowan	Max L. Barker	179,097.90	130,391.75	65.52
Rutherford	M. T. Wilkie	106,706.93	79,672.00	74.70
Sampson	H. A. Grady	222,556.00	110,837.00	49.80
Scotland	T. J. Dunn	61,200.00	39,561.00	64.64
181				
Stanley	George P. Palmer	151,374.00	119,256.00	78.78
Stokes	N. Earl Wall	169,465.00	100,339.00	59.20
Surry	B. F. Folger	198,624.00	108,860.00	54.80
Swain	D. E. Nichols	55,435.00	40,374.00	72.80
Transylvania	Roland Owen	39,950.00	24,870.00	62.25
Tyrell	A. Melson	48,603.33	34,232.00	70.41
Union	M. L. Flow	473,906.00	331,924.00	70.00
Vance	Robert G. Kittrell	500,066.00	307,311.00	61.50
Wake	H. E. Glenn	810,175.00	716,648.00	88.45
Warren	E. C. Price	131,427.33	69,200.00	52.60
Washington	Z. V. Norman	112,102.50	58,230.50	51.95
Watauga	T. E. Bingham	207,632.00	133,018.00	64.07
Wayne	D. E. Grantham	244,675.00	87,851.00	35.91

Wilkes	Frances Hendren	113,512.40	66,214.00	58.33
Wilson	R. L. Brinkley	304,964.00	191,107.00	63.44
Yadkin	John D. Reece	71,495.00	48,128.50	67.31
Yancey	C. C. Caraway	194,974.00	173,972.00	89.22
Total		$30,598,475.24	$20,373,684.07	66.58%

(Signed) C. J. O'BRIEN.

Subscribed and sworn to before me, this 24th day of January, 1922.

L. L. BLAYLOCK,
Clerk U. S. Dist Court.

182 *Opinion.*

Filed March 18, 1922.

In the District Court of the United States.

In Equity.

SOUTHERN RAILROAD COMPANY, ATLANTIC AND YADKIN RAILWAY Company, Atlantic Coast Line Railroad Company, Seaboard Air-line Railway Company, Norfolk-Southern Railroad Company

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, and Others.

Before Waddill, Circuit Judge, Boyd and Connor, District Judges.

Per Curiam:

Bills were filed in equity by the above named companies, to-wit: The Southern Railroad Company and the Atlantic and Yadkin Railway Company, in the United States District Court for the Western District of North Carolina and the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk-Southern Railroad Company, in the Eastern District of North Carolina, against the defendants A. D. Watts and A. D. Watts as Commissioner of Revenue, Baxter Durham, Auditor, Benjamin R. Lacy, Treasurer, and James S. Manning, Attorney General of North Carolina, in which, for the causes therein set forth, they and each of them prayed for an interlocutory injunction restraining and enjoining the said defendants, in their individual and official capacity, from proceeding with the collection and the enforcement of payment against complainants, of certain taxes assessed or about to be assessed against complainants and their property, until the

183 final hearing of said causes for that, among other things alleged in the bills, the statutes of the State of North Carolina under, and pursuant to which, said taxes were assessed and sought to be enforced, were unconstitutional and void. Pursuant to the provisions of Section 266 of the Judicial Code, James E. Boyd, Judge of the Western District, called to his assistance in hearing said motions for interlocutory injunction in said causes, brought in the Western District, Edmund Waddill Jr., Circuit Judge of the Fourth Circuit, and H. G. Connor, Judge of the District Court of the Eastern District of North Carolina, and H. G. Connor, Judge of the Eastern District, called to his assistance in hearing said motions, brought in the Eastern District, Edmund Waddill Jr., Circuit Judge of the Fourth Circuit and James E. Boyd, Judge of the District Court of the Western District of North Carolina.

As required by the provisions of the statute, the said district judges in the causes pending in said District made orders in which

they directed the defendants to show cause, at a time and place therein named, why the interlocutory injunctions would not be granted as prayed for.

The motions in said causes were, by consent of the complainants and the defendants, by their attorneys, heard together, at Greensboro North Carolina, on January 14th, 1922, when and where said judges being present said motions were heard upon the bills, answers, affidavits exhibits and argument of counsel, for all parties in said causes.

The further consideration of the motions was, by consent of the counsel and order of the court, continued to Raleigh, North Carolina, on March 16, 1922, when and where said judges being present, proceeded to consider said motions upon the pleadings, affidavits, exhibits and briefs filed by counsel.

It appears from the bills and answers that the said motions
184 and prayer for final relief of complainants are based upon the following allegations and contentions.

(1)

That the property of complainants was not assessed in the same manner and by the same method as the property of the individual citizens of the state and that, the manner and methods by which complainants' property is appraised and assessed for taxation operates as an unjust and unlawful discrimination against complainants, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and that, thereby, complainants are deprived of their property without due process of law.

(2)

That the appraisal and assessment for taxation of the property of complainants are not made in accordance with the provisions of the Constitution and Statutes of the State of North Carolina and that said appraisal and assessment of taxes thereon are invalid.

(3)

That the appraisal of the value of complainants' property is in excess of its true value for the purpose of taxation as provided by the Constitution of North Carolina and is, therefore, invalid.

(4)

That the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States in the appraisal and assessment of complainants' property are violated, in that complainants' property, alleged by the State to be assessed at its true value for taxation, the property of other tax payers in the state, is appraised and assessed for taxation at less than its true value.

185 That the Franchise or Privilege Tax imposed upon complainants is invalid for that:

(1)

The ad valorem assessment is in excess of its true value for taxation and that the Franchise or Privilege Tax, based thereon, in accordance with the Statutes of the State, violates the Constitution of the United States and the State of North Carolina.

(2)

The Franchise or Privilege Tax is in truth and fact an ad valorem Tax and invalid, because not imposed upon the property of other citizens of the State.

(3)

That the Statute of North Carolina, under and pursuant to which the Franchise or Privilege Tax is imposed and sought to be enforced imposes a tax upon the privilege of doing business by complainants, both interstate and intrastate and is, therefore, a burden upon interstate commerce and thereby violates the Commerce Clause of the Constitution of the United States.

(4)

That, if the Franchise or Privilege Tax imposed upon complainants be valid, the method of ascertaining the value of complainants' property as a basis for fixing the amount of said Franchise or Privilege Tax includes property of complainants used, as well in interstate as well as intrastate business and is, therefore a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

The Court, after consideration of the bills, exhibits, affidavits and argument of counsel. is of the opinion that, for the purpose of this motion only, complainants have neither in their pleadings,
186 nor upon the proofs adduced, made such a case as to entitle them to have an interlocutory injunction in said causes as prayed for, and the motions for such interlocutory injunctions in respect to the ad valorem and the Franchise and Privilege Tax should not be granted and said motions and each of them are denied.

The Court being of the opinion that the contentions sought to be made by complainants in regard to the imposition and enforcement of the Income Tax against complainants, as provided by the Constitution of North Carolina, Article V, Section 3, as amended, and the statutes enacted by the Legislature pursuant thereto and for the enforcement thereof are not presented upon the bills and proofs herein.

The Court, therefore, does not pass upon, or express any opinion with respect to the validity of the Income Tax, or the Statutes en-

acted for its enforcement. Complainants may, in respect to such income tax. proceed without prejudice in such manner as they may be advised.

Let this opinion and a copy thereof, be filed and an order drawn and signed to be filed in the record in each of said causes in accordance therewith.

The further proceedings in said causes, in the Courts of the District, in which they are pending, will be had as provided by the Judicial Code and the course and practice of said courts. The costs of the motion will abide the final decree in said causes.

At Raleigh, North Carolina.

This the 18th day of March, 1922.

EDMUND WADDILL,
United States Circuit Judge, Fourth Circuit.
JAS. E. BOYD,
U. S. District Judge, Western District of No. Ca.
H. G. CONNOR,
U. S. District Judge, Eastern District of No. Ca.

187 *Order.*

Filed March 18, 1922.

In the United States District Court for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY CO., Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This cause came on this eighteenth day of March 1922, before the United States District Court for the District of North Carolina, held by the undersigned three United States Judges sitting pursuant to the provisions of Section 266 of the Judicial Code, to be heard upon a motion for an interlocutory injunction to enjoin and restrain the State of North Carolina from collecting certain taxes enumerated in the complainant's bill, which motion was heard and considered upon the pleadings, and the affidavits filed respectively by the complainant and the defendants, and was argued by counsel. Whereupon the court composed of the three judges sitting as aforesaid, having filed an opinion denying the right of the complaint to have an interlocutory injunction, it is, for reasons stated in writing in said opinion filed in this cause, and pursuant thereto, adjudged, Ordered and decree that said injunction so prayed for be and the same is hereby refused and denied. And it is further

ordered that the defendants shall not proceed to enforce the
188 collection of taxes involved in this litigation, for the period of thirty days from the date of this order, to the end that the complainant may take such action in the premises as it is advised to.

EDMUND WADDILL, JR.,
United States Circuit Judge,
Fourth Judicial Circuit.
JAS. E. BOYD,
United States District Judge,
Western District of North Carolina.
H. G. CONNOR,
United States District Judge,
Eastern District of North Carolina.

188½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

ATLANTIC AND YADKIN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Petition for Appeal to the Supreme Court of the United States and Assignments of Error.

S. R. Prince,
Solicitor for Complainant.

L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
C. O. Amonette,
Of Counsel.

189 *Petition for Appeal.*

Filed March 31, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC AND YADKIN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

To the Honorable James E. Boyd, District Judge of the United States for the Western District of North Carolina:

The Atlantic and Yadkin Railway Company, the above named Complainant, feeling aggrieved by the Order of the Court, consisting of Circuit Judge Waddill and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code of the United States, entered in the above entitled cause on the 18th day of March, 1922, refusing and denying the interlocutory injunction applied for in this cause to restrain the Defendants, until
190 the case could be heard on its merits, does, as provided in Section 266 of the Judicial Code of the United States, hereby appeal to the Supreme Court of the United States from the Order refusing and denying the interlocutory injunction applied for upon the grounds set forth in the assignments of error filed herewith, and complainant prays that its appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings, and documents upon which said appeal is based, duly authenticated, be sent to the Supreme Court of the United States, under the rules of such Court in such cases made and provided.

And complainant further prays that the court enter an order continuing in effect the thirty day stay granted by the court in the order entered March 18, 1922, until the appeal herein prayed for shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

ATLANTIC AND YADKIN RAILWAY COMPANY,
By S. R. PRINCE,
Solicitor.

191 In the Dist. Court of the U. S. for the Western Dist. of N. C.

In Equity.

No. —.

ATLANTIC & YADKIN RY. CO., Complainant,

vs.

A. D. WATTS & A. D. WATTS, as Comr. of Rev., et al.

Assignments of Error.

Filed March 31", 1922.

Now comes the complainant, in the above entitled cause, and in connection with its petition for appeal from the order entered March 18, 1922 (by the court convened under Section 266 of the Judicial Code of the United States), denying the motion for interlocutory injunction, files the following assignments of error:

The Court erred:

(1) In decreeing that the interlocutory injunction be denied.

(2) In holding that for the purpose of the motion for an interlocutory injunction only, complainant neither in its pleadings, nor upon the proof adduced, is entitled to have the interlocutory injunction applied for.

(3) In failing to hold that the assessment of complainant's property for taxation is in excess of its "true value" in money for the purpose of taxation as required by the Constitution of North Carolina and is therefore invalid.

(4) In failing to hold that the appraisal of complainant's property for taxation is not made in accordance with the provisions of the Constitution and Statutes of North Carolina, and that said appraisal and assessment of taxes are invalid and illegal.

192 (5) In failing to hold that the manner and method by which complainant's property was assessed is illegal and operates as an unjust and unlawful discrimination against complainant in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that thereby complainant is deprived of its property without due process of law and denied the equal protection of the law.

(6) In failing to hold that the action of the Commissioner of Revenue, in declining to make a reduction in the value of complainant's property commensurate with the horizontal reductions made by the taxing authorities under the North Carolina law permitting such reductions on other property generally, was unjust dis-

crimination, contrary to the Uniformity Clause of the Constituton of North Carolna and the Fourteenth Amendment to the Constitution of the United States.

(7) In failing to hold that the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States are violated, in that complainant's property is alleged by the State to be assessed at its true value for taxation, while the property of other taxpayers generally in the State is appraised and assessed for taxation at less than its true value in money and that this appraisal and assessment of the property
193 of other citizens and taxpayers of the State has been long continued and is arrived at under a scheme of taxation which shows intent to place an undue burden of taxation upon complainant and its property.

(8) In failing to hold that the scheme of taxation of the State of North Carolina and the assessment of the properties of the various classes of taxpayers is by settled purpose and intent so designed and carried out that, while the property of complainant is assessed at its true value in money, or more than its true value in money, the large proportion of the property in the State is assessed at less than its true value in money, thereby casting an undue and excessive burden upon complainant, in violation of the Uniformity Clause of the Constitution of the State of North Carolina and in violation of the Fourteenth Amendment to the Constitution of the United States.

(9) In failing to hold that the ad valorem assessment being in excess of true value for taxation, the so-called Franchise tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

(10) In failing to hold that the so-called Franchise or Privilege tax is in truth and in fact an additional ad valorem or property tax upon complainant's property and is illegal and invalid be-
194 cause levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State and the enforcement of such void statute deprives complainant of its property without due process of law, contrary to the Constitution of the United States.

(11) In failing to hold that the so-called Franchise or Privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in inter and intrastate commerce and is, therefore, a burden upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(12) In failing to hold that if the Franchise or Privilege tax be imposed for the privilege of engaging in intrastate commerce, it is measured in part by the value of the privilege of engaging in interstate commerce, in that it is based upon the entire value, including values derived from use in interstate commerce, and is, therefore, a burden imposed upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(13) In failing to hold that if the so-called Franchise or Privilege tax be imposed for the privilege of engaging in intrastate commerce, the tax should have been assessed against complainant
195 upon one-half of the ad valorem value, as provided in Section 82 (3½) of the Revenue Act of North Carolina of 1921, and that the tax assessed against complainant upon the full value of its property is, therefore, contrary to law and void.

(14) In failing to hold that the payment of the so-called Franchise or Privilege tax is exacted as a condition precedent to the right of complainant to do "any business" in the State, whether interstate or intrastate, and, therefore, unconstitutional and void.

(15) In failing to hold that the assessment made is void, in that it includes in the value used as a basis for arrival at the Franchise or Privilege tax the value of property not used in the business for which the privilege tax is exacted and such law and the enforcement thereof in the manner set forth violates the Fourteenth Amendment to the Constitution of the United States.

(16) In failing to hold that the tax system of the State of North Carolina, which includes an ad valorem tax on the full value of its property in the State, including as a part thereof value it has due to its use in interstate commerce, plus a Franchise or Privilege tax upon the full value of the said property for ad valorem purposes, plus an income tax of three per cent on its net operating income,
196 does in practical operation result in a burden upon interstate commerce and violates the Commerce Clause of the Constitution of the United States.

Wherefore, plaintiff prays that the decree be reversed and that the court may be directed to enter a decree allowing the interlocutory injunction.

S. R. PRINCE,
Solicitor for Complainant.

L. E. JEFFRIES,
MANLEY, HENDREN & WOMBLE,
A. B. ANDREWS,
C. O. AMONETTE,
Of Counsel.

197 *Notice of Application of Southern Railway Company for Stay of Proceedings and Order.*

Filed March 31, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

To the defendants in the above entitled action and Honorable James S. Manning, Attorney General of North Carolina, and Frank Nash, Assistant Attorney General, Solicitors for defendants:

You will please take notice that on Friday, March 31st, 1922, at 10:00 o'clock A. M., or as soon thereafter as counsel may be heard, the above named complainant will apply to His Honor, James E. Boyd, United States District Judge for the Western District of North Carolina, at office in Greensboro, N. C., for an order allowing the complainant to appeal to the Supreme Court of the United States and granting a stay of proceedings until the appeal shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

SOUTHERN RAILWAY COMPANY,
By S. R. PRINCE, *Solicitor.*

198 *Order Continuing Petition for Appeal and for Stay.*

Filed March 31st, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The petition of complainant for appeal and for an order staying the proceedings pending appeal came on to be heard this date, and,

upon application of defendants for a continuance, it is ordered that the petition for appeal and for stay be and it is continued to 10 A. M., April 10, 1922, at Greensboro N. C.

JAS. E. BOYD,
U. S. Judge.

March 31, 1922.

199 *Order Allowing Appeal & Fixing Bond.*

Filed April 10, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY CO., Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This matter coming on to be heard on the application of complainant for an appeal to the Supreme Court of the United States, under Section 266 of the Judicial Code of the United States, from the decree entered in this cause on the 18th day of March 1922, refusing and denying the interlocutory injunction applied for; and upon the assignment of errors filed in said cause and presented to the Court with the said application for appeal and for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18, 1922, until the appeal prayed for shall have been heard, passed upon and disposed of by the Supreme Court of the United States;

And all parties being represented by counsel now before the Court on due notice.

It is ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the order and decree filed and entered herein on the 18th day of March 1922, refusing and denying the interlocutory injunction prayed for, upon the giving of bond in the sum of $1,000.00.

It is further ordered that citation of appeal issue and be served upon the defendants or their attorney of record, and that the Clerk of this Court prepare and forward to the Supreme Court of the United States a transcript of the record of the proceedings, pleadings, affidavits etc., upon which the judgment herein was rendered, duly authenticated.

200 The Court being of the opinion that the application to continue in effect the thirty day stay granted March 18, 1922 by the Court, consisting of Circuit Judge Waddill and District

Judges Connor and Boyd, should more properly be heard and passed upon by the three judge court, that part of the petition of complaint is not now ruled upon, but is continued for hearing before the three Judges on a date to be later fixed, and the appeal hereinbefore allowed is without prejudice to complainant as to time of the hearing of the matter of further stay asked for.

This 10th day of April 1922.

JAS. E. BOYD,
U. S. Judge.

201 *Appeal Bond.*

Filed April 10th, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

ATLANTIC & YADKIN RAILWAY CO.

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Know all men by these presents: That we, the Atlantic and Yadkin Railway Company, a corporation organized and existing under the laws of the State of —— as principal, and Fidelity and Deposit Company of Baltimore, Md., as surety, are held and firmly bound unto the above named A. D. Watts, and the other defendants in the sum of One thousand ($1,000.00) Dollars, to be paid to the said A. D. Watts and other defendants, their successors or assigns; to which payment, well and truly to be made, we bind ourselves and our successors jointly and severally by these presents.

Sealed with our seals and dated this 10th day of April, 1922.

Whereas in a suit pending in the District Court of the United States for the Western District of North Carolina between Atlantic & Yadkin Railway Company, Complainant, and A. D. Watts et al. defendants, a decree was rendered by the court, consisting of Circuit Judge Waddill, and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code, denying the com-

202 plainant an interlocutory injunction as prayed for, and the Atlantic & Yadkin Railway Company having prayed and been allowed an appeal under Section 266 of the Judicial Code of the United States, direct to the Supreme Court of the United States, and filed a copy thereof in the Clerk's Office of the said Court, and citation having issued, directed to the said A. D. Watts et al., citing and admonishing them to be and appear in the Supreme Court of the United States within the time required by law.

Now, the condition of the above obligation is such, that if the said Atlantic & Yadkin Railway Company shall prosecute its said

appeal to effect, and answer all damages and costs if it fails to make its appeal good, then the above obligation to be void; else to remain in full force and effect.

ATLANTIC & YADKIN RAILWAY COMPANY,
By S. R. PRINCE,
General Solicitor.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND.
EDWARD J. CARPENTER, [SEAL.]
Attorney-in-Fact.

Approved this 10th day of April 1922.

JAS. E. BOYD,
U. S. District Judge.

203 *Citation and Acceptance of Service.*

Filed April 10, 1922.

UNITED STATES OF AMERICA:

The President of the United States to A. D. Watts and A. D. Watts, as Commissioner of Revenue, et al., Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be holden at the City of Washington, on the 8th day of May next, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Western District of North Carolina, wherein Atlantic and Yadkin Railway Company is Plaintiff and you are defendant- in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said appeal mentioned, should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand in the City of Greensboro, N. C., in the District above named, this 10th day of April 1922.

JAS. E. BOYD,
Judge of the District Court of the United States for the Western District of North Carolina.

Service of within citation accepted for all defendants April 10th 1922.

A. D. WATTS,
Commissioner of Revenue, and
OTHER DEFENDANTS,
By WM. P. BYNUM,
Attorney.

204 *Stipulation of Counsel.*

Filed April 13, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

ATLANTIC & YADKIN RAILWAY CO., Complainant,

—

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

It is stipulated and agreed by and between the parties to the above entitled cause;

That the Clerk, in making up the transcript of record on this appeal from the order denying complainant's motion for an interlocutory injunction, shall include therein all pleadings, orders, motions, stipulations, affidavits and exhibits, constituting the entire record before the Court, except there may be omitted from the record the following;

(1) Exhibit A to the Additional Affidavit of M. R. Hubbard, which exhibit was a printed copy of the Rules of the Interstate Commerce Commission Govering Separation of Operating Expenses of Railways and Railway Accounting as Prescribed by the Interstate Commerce Commission.

(2) The Clerk shall not include as a part of the transcript the individual affidavits of the Registers of Deeds of the 100 Counties in the State of North Carolina, together with the tabulated lists of conveyances recorded from January 1, 1921 to June 30, 1921, and setting forth opposite each conveyance the consideration in the deed and the assessed value for taxation of the property conveyed.

(3) Return of the service of the notice of the hearing on plaintiff's application for an interlocutory injunction.

(4) Return of the service of the writ upon the various defendants.

(5) Statement attached to McCarthy's affidavit consisting of name of stock or bond par value, and market value, and total
205 market value for the years 1917, 1918, 1919, 1920 and 1921. The purpose here being to have in this transcript the affidavits as it was printed for the hearing before the three-judge Court.

The Clerk shall include as a part of the transcript one of said affidavits, to-wit; that of B. M. Rogers, Register of Deeds for

Alamance County, N. C. together with the tabulated statement of deeds recorded and the deed value of each parcel conveyed and the assessed value for taxation of each parcel so conveyed, this one being typical of all as to the form and character of information contained therein. It is unnecessary to set forth the individual affidavits of deed and tax value taken from the records of each separate County in the State, because the information shown on said separate affidavits, containing the deed value of separate conveyances and a comparison of the tax assessment of each said parcel, is summarized in the affidavit of C. J. O'Brien, which is to be included in the transcript.

It is further stipulated that the Clerk may use in preparing the record on appeal printed copies of all such pleadings, documents, affidavits etc., as may be furnished by the parties hereto.

S. R. PRINCE,
Solicitor for Complainant.
JAMES S. MANNING,
Attorney General of N. C.,
Solicitor for Defendants.
FRANK NASH,
Assistant Attorney General.

206 *Order Denying Stay and Granting 30 Days to Make Application to Supreme Court.*

Filed April 18, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 162.

ATLANTIC & YADKIN RAILWAY COMPANY, Plaintiff,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This matter coming on to be heard at Raleigh, North Carolina, on April 15, 1922, on the application of plaintiff for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18, 1922, until the appeal heretofore taken shall have been heard, passed upon, and disposed of by the Supreme Court of the United States, and all parties being represented by counsel now before the Court;

The Court, being of the opinion that the application to continue in effect the thirty day stay granted March 18, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States, denies the application for continuance of

said stay until the appeal is decided by the Supreme Court of the United States.

And it appearing to the Court that the hearing of this application has been delayed through no fault of plaintiff's, and the Court being of the opinion that the status quo should be continued until the application for restraint pending the appeal can be made to and decided by the Supreme Court of the United States, orders that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order.

EDMUND WADDILL, JR.,
U. S. Circuit Judge, Fourth Judicial Circuit.
JAS. E. BOYD,
U. S. District Judge, Western District of North Carolina.
H. G. CONNOR,
U. S. District Judge, Eastern District of North Carolina.

207 *Order to Transmit Record.*

And thereupon it is ordered by the Court here, that a transcript of the record and proceedings in the cause aforesaid together with all things thereunto relating be transmitted to the said Supreme Court of the United States of America, and the same is transmitted accordingly.

R. L. BLAYLOCK,
Clerk,
By H. M. CAUSEY,
Deputy Clerk.

UNITED STATES OF AMERICA:

In the District Court for the Western District of North Carolina.

I, R. L. Blaylock, Clerk of the District Court of the United States, for the Western District of North Carolina, do hereby certify that the above and foregoing is a full, true, and complete copy of the record, according to the Stipulation of Counsel hereto attached as appears from the original papers and records in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at office in the City of Greensboro, in said District, on this the 18th day of April A. D. 1922.

[Seal of United States District Court, Western Dist. of N. C.]

R. L. BLAYLOCK,
Clerk U. S. District Court,
By H. M. CAUSEY,
Deputy Clerk.

Endorsed on cover: File No. 28,883. W. North Carolina D. C. U. S. Term No. 928. Atlantic and Yadkin Railway Company, appellant, vs. A. D. Watts and A. D. Watts, as commissioner of revenue, et al. Filed April 25, 1922. File No. 28,883.

In the Supreme Court of the United States.

October Term, 1922.

No. 369.

ATLANTIC & YADKIN RAILWAY COMPANY, Appellant,

vs.

A. D. WATTS et al., Appellee-.

In this cause, it appearing to counsel for appellant and appellee that the Transcript of Record in this cause from pages 25 to 45, both inclusive, which sets forth the answer in the suit of "Atlantic Coast Line Railroad Company vs. A. D. Watts, Et Al." is an error; and it further appearing to counsel for both parties that there is omitted from the transcript in the case of "Atlantic & Yadkin Railway Company vs. A. D. Watts, Et Al." the answer of the defendant, counsel do now stipulate that the attached answer is a true copy of the answer in said cause and should be a part of the record herein.

Oct. 2nd, 1922.

S. R. PRINCE,
Counsel for Appellant.
JAMES S. MANNING,
Atty. Genl., Counsel for Appellee.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

ATLANTIC AND YADKIN RAILWAY COMPANY

v.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et als.

Answer.

Come now A. D. Watts and the other defendants in the above entitled suit and, answering the complaint filed by the plaintiff therein, say:

1. The allegations of article one are admitted. The defendants aver that the plaintiff is a domestic corporation with its entire line of railroad lying within North Carolina and that the principal business of the plaintiff is the transportation of freight and passengers in intrastate commerce from points within the State of North Carolina to other points within that State.

2. The allegations of article two are admitted.

3. The allegations of article three and the sections thereof are admitted, except as hereinafter stated.

Section 64 of the Machinery Act of 1921, referred to in subsection (*e*) of article three of the complaint, did not make it the duty of the Commissioner of Revenue to do the things therein stated, but made it the duty of the State Tax Commission. Thereafter there was enacted a separate statute, ratified March 8, 1921, being Public Laws, Session 1921, page 388, whereby the powers and duties of the State Tax Commission were transferred to and imposed upon the Commissioner of Revenue. That statute, however, and the said Section 64 of the Machinery Act of which it was amendatory, did not require the Commissioner of Revenue to assess the property of railroads for taxation for the year 1921 or for any year thereafter until 1924. The State Tax Commission had made the assessment of railroad properties in North Carolina for taxation for 1920, and the said assessment had been approved by the General Assembly of North Carolina at the Extra Session of 1920, Public Laws 1920, Chapter 1, and adopted as the basis for taxation for the years 1920 to 1923, inclusive. The only power with reference to assessments of railroad properties given to the Commissioner of Revenue by the Public Laws of 1921 was the power to review such assessments given by the Machinery Act of 1921, Section 28 (*g*).

Section 65 of the said Machinery Act referred to and the proviso thereof quoted in subsection (*f*) of article three of the complaint is the statute particularly controlling the assessment of the property for taxation of railroads doing interstate commerce, operating both within and without North Carolina.

The said Section 82 (6½) of the Revenue Act of 1921, referred to and quoted in subsection (*g*) of the third article of the complaint, was first enacted by the General Assembly at the Extra Session of 1920, Public Laws 1920, Chapter 1, Section 7 (*d*), and was carried forward without change in the Revenue Act of 1921. The said Section 82 (6½) was a substitute for Sections 77 and 78 of the Revenue Act of 1919, which imposed a privilege tax on railroads for the privilege of doing intrastate business in North Carolina, based on gross earnings per mile within the State. The provisions of Sections 77 and 78 of the Revenue Act of 1919 had existed in the laws of North Carolina for many years. The said Section 82 (6½) substituted for the old privilege tax on gross earnings per mile a new form of privilege or franchise tax upon all railroads for the privilege of doing intrastate business within North Carolina, based on the total properties of each of said railroads within North Carolina as assessed under the Machinery Act for ad valorem taxation.

The allegations of section (*h*) of article three of the complaint are admitted, and it is alleged that the said income tax is not only levied upon railroads, but that the same tax is levied in the same way upon all corporations doing business in North Carolina, foreign and domestic, railroad corporations, and others, equally and without discrimination.

4. The allegations of article four of the complaint are admitted, except as hereinafter qualified or denied. The Revenue Commis-

sioner did not, in 1921, assess the properties of the plaintiff for ad valorem taxes at $4,104,710, as alleged; he made no assessment of the said properties and had no authority under the law to make such assessment. His only authority was to review the assessment of 1920 made by the State Tax Commission and approved by the General Assembly as aforesaid, on an application by the plaintiff for a review of the said assessment. He did review the assessment made by the State Tax Commission for 1920 and carried forward for 1921 as he was authorized to do by law, upon the petition of the Southern Railway Company, owner of the plaintiff as hereinafter alleged.

It is denied that at the hearing before the Revenue Commissioner facts were adduced showing that the said valuation was in excess of the true actual value of the property as the said term is defined in Section 28 (*e*) of the Machinery Act, but on the facts adduced at that hearing and the evidence before the Commissioner of Revenue he was convinced, and adjudged, that the said value was the true actual value of the property and should stand without change as the assessment of the plaintiff's property for taxation. Upon the petition of the plaintiff, through its owner, the Southern Railway Company, for a further review by the State Board of Equalization, the Commissioner of Revenue sitting with the board and as a member thereof, granted the application for the hearing and after due consideration of the documents filed and the arguments and statements made was of opinion that the valuation theretofore made by the State Tax Commission was fair and just and with the advice and approval of the other members of the Board declined to change or reduce the same.

5. The allegations of article five of the complaint are denied, except as hereinafter specifically admitted. Further answering that article the defendants say that the said assessment of the plaintiff's property in North Carolina for 1921 being the assessment made by the State Tax Commission for 1920 and brought forward by the Commissioner of Revenue for 1921, was the true value in money of the said property for tax purposes for the said years as the same is defined in Section 28 (*e*) of the Machinery Act. It is denied that the State Tax Commission or the Commissioner of Revenue has not advised the plaintiff of the separate amounts or values at which its tangible property and its franchise or intangible property were assessed for taxation. The defendants deny that they have knowledge or information sufficient to form a belief as to what advice the State Tax Commission gave the plaintiff in 1920 as to its method of arriving at the assessment of plaintiff's property made by the said Commission for the years 1920 to 1923, inclusive. It is admitted that the plaintiff was advised that the aggregate value of its physical or tangible property and of its franchise or intangible property for 1921 was $4,104,710 for the purpose of ad valorem taxation, the same amount at which the said property of the plaintiff was assessed for taxation by the State Tax Commission in and for the year 1920, and the defendants aver that the said assessment was correct, legal, and represented the true actual value of the said property for both the

years 1920 and 1921. It is admitted that in 1920 the State Tax Commission assessed all of the lines operated by the Southern Railway Company, including the plaintiff's, together at the amount of $101,960,413 and then apportioned this total assessment to the Southern Railway Company, to the plaintiff, and to other railroads operated as a part of the Southern Railway System. It is admitted that the part of this total assessment allocated to the plaintiff by the State Tax Commission was $4,104,710. The apportionment of the total of $101,960,413, and the allocation to the plaintiff of $4,104,710, was made by the State Tax Commission in accordance with the plan suggested by the plaintiff and the Southern Railway Company themselves by letter to the State Tax Commission from Mr. Hubbard, Tax Commissioner of the Southern Railway System, written to the State Tax Commission of date July 21, 1920.

It is denied that the State Tax Commission used the method of capitalization of the net income for North Carolina of the plaintiff and other railroads operated by the Southern Railway Company exclusively in arriving at the said assessment. As required by Section 64 of the Machinery Act the State Tax Commission, in 1920, in determining the value of the tangible and intangible property of the plaintiff for purposes of taxation gave due consideration to all those factors, modes, and methods therein required to be considered. As further required by Section 65 of the Machinery Act, in determining the said total assessment for the Southern Railway System, the State Tax Commission gave due consideration to the character of the road bed and fixed equipment in North Carolina; to the number of miles of double track in the said State; to the amount of gross and net earnings per mile of road in this State; and to all other factors in the possession of the State Tax Commission which would give a greater or less value per mile of road in this State than the average value for the plaintiff's entire system.

By the application of the foregoing methods required by the said statute to be used, except the capitalization of net income method and the stock-and-bonds method, the State Tax Commission arrived at a figure for the valuation of the said properties operated as a part of the Southern Railway System in excess of the $101,960,413, at which they were actually assessed. By a due consideration then of the capitalization of net income for the State of North Carolina at 6 per cent and of the market value of the plaintiff's stocks and bonds and other securities, this figure was reduced in favor of the plaintiff and other railroads in the System from one which would otherwise have been greater to that finally adopted. The consideration by the State Tax Commission of the method of capitalization of net income at 6 per cent, instead of working to the disadvantage of the plaintiff, worked to its great advantage and had the effect of materially lowering what would otherwise have been a higher assessment.

It is denied that the Revenue Commissioner made an assessment of the plaintiff's property for 1921 or used any method whatever in making such assessment. He merely carried forward the assessment which was made by the State Tax Commission for 1920 and which was approved and adopted as the assessment for the years 1920 to

1923 inclusive by the Extra Session of the General Assembly of 1920.

It is admitted that the plaintiff was in 1919, and is now, a separate corporate entity from the Southern Railway Company, but it is denied that it is separately operated. The defendants aver that the Southern Railway Company controls the plaintiff through ownership of the entire capital stock in the plaintiff corporation, and that the Southern Railway Company operates the plaintiff's railroad as a part of the Southern Railway System. The defendants further aver that the method of accounting within the Southern Railway System and the allocation of operating revenues and expenses to the plaintiff and to other railroads operated by the Southern Railway Company is done according to a method devised by the plaintiff and the Southern Railway Company themselves. It is denied that either the plaintiff or the Southern Railway Company, is prejudiced by an assessment together of the total properties of the Southern Railway System and the allocation to the plaintiff and other railroads operated as a part of that system of certain portions of that total assessment according to the methods of accounting and allocation devised by the Southern Railway Company itself, which allocation in fact gave to the plaintiff as the assessment of its total properties in North Carolina the exact figure suggested by the Tax Commissioner of the Southern Railway System to be taken as hereinbefore stated. The defendants further aver that if the said total assessment of the plaintiff's property were in any way in excess of the actual value of such property, this would result from the fact that other properties belonging to the Southern Railway System and to the same owner were underassessed and the difference added to the plaintiff's assessment by reason of the method of allocation suggested by the plaintiff itself and the Southern Railway Company. As showing that neither the plaintiff nor the Southern Railway Company is injured by the amount of such allocation to the plaintiff, reference is made to the said letter of the Tax Commissioner of the Southern Railway System of July 21, 1920, above referred to, wherein he suggested the distribution among the various companies of the Southern Railway System of the total assessment to North Carolina, and added:

"If you feel that any of these values are too high I would suggest that it would be entirely proper to give a further arbitrary increase to the North Carolina Midland and to the Atlantic and Yadkin in order to absorb any reduction on the double-track line. You understand, of course, that I am not wedded to this distribution and am making same only as a suggestion and for the purpose of affording you all possible assistance."

It is denied that the said assessment of the plaintiff's property was illegal, and it is denied that the said total assessment of all of the properties of the Southern Railway System was illegal or was an overassessment, as will appear from the answer filed by these defendants in the suit entitled "Southern Railway Company against A. D. Watts et al."

It is denied that in assessing the plaintiff's property either the Commissioner of Revenue or the State Tax Commission acted without warrant of law or to the plaintiff's damage, and it is denied that the said assessment is illegal and that the exaction of taxes based thereon deprived plaintiff of its property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States or the uniformity section of the North Carolina Constitution.

6. Answering the allegations of article six the defendants deny that the assessment of $4,104,710 is an overassessment of the plaintiff's property, or in excess of its true value for tax purposes, as defined by the laws of North Carolina.

(1) The defendants deny knowledge or information sufficient to form a belief as to the truth of the figures set out on page 12 of the complaint as to the operating results of the plaintiff for the last five-year period. They deny that the assessment of the plaintiff's property was arrived at merely by the method of capitalization of net income. It is denied that the Revenue Commissioner ever increased the plaintiff's assessment arbitrarily or otherwise. It is denied that the said assessment was ever increased because the plaintiff's property, together with the property of other companies, showed that there was a net income for all of them, the capitalization of which produced an increase of 107 8/10 per cent or any other per cent. The defendants aver that the State Tax Commission in determining the values of the property of the plaintiff and of the other railroads in the Southern Railway System used the various methods set forth in article five of the answer of these defendants in the said suit in this court entitled "Southern Railway Company v. A. D. Watts and others," and the defendants pray that the said article of said answer may be referred to and made a part of this answer as fully as if it were here copied.

(2) The defendants deny knowledge or information sufficient to form the belief as to the amount of the plaintiff's capital stock and bonded indebtedness, and as to what dividends have been paid or declared in recent years upon the capital stock. It is admitted that the plaintiff's stock and bonds have no such market value as would result in a fair assessment by merely calculating the value of the property by what is known as the stock-and-bond method, the defendants aver that the value of the property of the plaintiff subject to taxation in North Carolina is far in excess of the figure which would be arrived at by a mere use of the said stock-and-bond method alone, and particularly is far in excess of the value of $1,750,000, alleged by the plaintiff.

(3) The defendants deny knowledge or information sufficient to form a belief as to the figures for investment in road and equipment filed by the plaintiff with the Interstate Commerce Commission, but they admit that the plaintiff's said property account is not a proper criterion of the value of the plaintiff's property, and allege that its value for taxation is much in excess of the said figure. The

defendants show that the said investment account figures do not include any of the intangible property belonging to the plaintiff or inhering in its railroad lines. The defendants show that while the said investment accounts may represent approximately the value of the tangible or physical property of the plaintiff's lines, a great part of the value of the plaintiff's railroad results from the fact of its use and operation in connection with and as an integral part of the Southern Railway System and the enormously valuable property in that system; standing alone and as disconnected from the other properties in the Southern Railway System the physical or tangible property of the plaintiff would be worth far less than it actually is worth due to the intangible values which it has resulting from its connection and operation with the Southern Railway System. It is denied that the assessment complained of is unreasonable or excessive as alleged.

(4) Answering the allegations of article six, section (4), of the complaint as to the so-called tentative values of the Interstate Commerce Commission the defendants say that these figures are purely tentative and in no way final or binding. They are figures arrived — by the engineers of that Commission from an estimation of the value of property of the plaintiff and of the railroad based on an inventory as of June 30, 1916, and on prices prevailing June 30, 1914. The price level in general, and particularly the cost of railroad construction, have very much increased since 1914. As an illustration of this reference is made to the report of the Southern Railway Company to its stockholders for the year ending December 30, 1920, being its 25th annual report, and to page five thereof, wherein the Southern Railway Company reports that the work of laying a double track on a revised grade of that company's line between Washington and Atlanta had been finished; that, as originally contracted and estimated, this work was to cost $34,838,000, but that the actual cost of it was $52,134,000, or about 50 per cent greater. This latter sum represents the actual cost of construction of 625 miles of second track, the cost of laying which is less than that of laying first track, and shows that the said second track between Washington and Atlanta cost $82,884 a mile on an average. The year 1914, upon the price level of which the said tentative figures of the Interstate Commerce Commission are based, was actually a subnormal period as to prices with relation both to time before and time after the said year. Therefore, the said tentative figures in no way represent the actual cost of replacement of the tangible property of the plaintiff as of the date of 1920 and 1921.

In addition, these tentative figures do not include the intangible property of the plaintiff, consisting of the franchise to be a corporation, the franchise to do business as a corporation, the going-concern value, and the other intangible values resulting from the operation of the plaintiff's railroad as an integral part of the Southern Railway System as hereinbefore stated, all of which property values are subject to taxation in North Carolina.

To the said tentative figures the plaintiff, on page 13 of its com-

plaint, adds only an estimated value of real estate at $193,298, which is an estimate of its land by the plaintiff itself at a figure much lower than its actual value. It is denied that $2,886,570 is in any way the limit or measure of the value of the plaintiff's property for taxation in North Carolina.

It is admitted that the plaintiff does not concede that the valuation found by the Interstate Commerce Commission for rate-making purposes under the Interstate Commerce Act is the true value of its property for tax purposes as required by the Constitution and laws of North Carolina. On the other hand, defendants are informed and believe, and therefore allege, that the Southern Railway Company, and the plaintiff as a part of its system, appearing before the Interstate Commerce Commission for the purpose of securing higher rates, maintained that the value of its property in North Carolina was far greater than that shown by the said tentative figures; that about the time the said assessments now in question were made in North Carolina for taxation, the Southern Railway System, and the plaintiff as a part thereof, was contending before the Interstate Commerce Commission that that body should take as the value of the property of that system and of the plaintiff a figure higher than the plaintiff's investment account, and much higher than the figure which the plaintiff now contends to be its value in this suit in which it attacks North Carolina tax assessments as excessive.

It is denied that the said tentative values have any effect to prove that the assessment of the plaintiff's property is excessive, and it is denied that it is necessary to recognize the said tentative values in order to prevent discrimination as between the several railroads in this State. It is denied that the true value of the plaintiff's property for tax purposes under the laws of North Carolina is less than the total value arrived at by the said tentative figures. It is denied that any amount of illegal taxes will be required to be paid by the plaintiff, and that it will pay any excessive tax unless the collection thereof be restrained or otherwise.

(5) It is denied that the fact that the test period used under the Federal Control Act to determine the standard returns to railroads showed an annual deficit for the plaintiff has any effect to prove that the assessment of the plaintiff's property for taxation is excessive and illegal. That test period was one of sharp depression, and was, therefore, not a reflection of the earnings of the plaintiff that may be expected under normal conditions, and when the provisions of the amended Interstate Commerce Act with respect to rate and earnings become effective, nor was it a reflection of the actual value of the plaintiff's property.

(6) The allegations of article six, section (6) of the complaint are denied, and the defendants aver that the plaintiff's property has an intangible or a franchise value, and that the assessment of the plaintiff's property, tangible and intangible, was based on an abundance of evidence. It is denied that the said assessment violates section three of article five of the Constitution of North Carolina, and it is denied that to exact taxes thereon would deprive plaintiff of its

property without due process of law or would violate the Fourteenth Amendment to the Constitution of the United States.

(7) The allegations of article six, section (7) of the complaint are admitted, but the defendants aver that there were no just grounds for protest against the tax paid by the plaintiff in 1920.

(8) Section 28 (*a*) of the Machinery Act of 1921 is admitted to be correctly quoted in article six, section (8) of the complaint. It is admitted that the county boards of review of the counties through which the plaintiff operates made the reductions in the assessed value of real property in general in their respective counties in the percentages set out in the table on page 17 of the complaint, reported the same to the State Board of Equalization, and that the assessments so reduced were not revised or changed by that board and therefore became effective.

It is denied that the assessment for 1920 as to railroads was in excess of true value. The defendants aver, however, that the assessment for 1920 of real property in general, other than railroad property devoted to purposes of transportation, was in fact in excess of true value for 1921; that the assessments of the property of the plaintiff devoted to transportation, and that of other railroads in the State, for 1920, were already at their true value, and that the failure of the Commissioner of Revenue to make similar reductions of the assessment of the plaintiff's railroad property resulted in no discrimination and in violation neither of the Constitution of North Carolina nor of the Constitution of the United States.

Furthermore, it is denied that the Commissioner of Revenue declined to consider or to give to the plaintiff the benefit of any similar reductions in the said counties; the defendants aver that although such reductions were not applied to the right of way, land and structures thereon, that is to strictly railroad property of the plaintiff, they were applied to the property of the plaintiff lying off the right of way exactly as they were applied to other real property in general, and that there was no discriminative violation by the Commissioner of Revenue of Section 3 of Article V of the Constitution of North Carolina, and no violation of the Fourteenth Amendment of the Constitution of the United States.

The defendants deny knowledge or information sufficient to form a belief as to what the amount of tax of the plaintiff for 1921 will be, but it is denied that the said tax will be discriminatory against the plaintiff as compared with other taxpayers, and the defendants aver that taxes against all taxpayers in general in the State will be considerably increased for 1921 by reason of the necessity of raising revenue to finance the enlarged programs for public improvements and for public schools in the State. The defendants further aver that the actual total amount of taxes paid by the plaintiff in 1920 in and to the State of North Carolina and the subdivisions thereof was much less than the total amount paid by it in 1919 before the enactment of the Revaluation Act and the revaluation made thereunder.

Further answering, the defendants refer to paragraphs four to

nine, inclusive, of article eight of their answer to the complaint of the Southern Railway Company in the case in this court entitled "Southern Railway Company v. A. D. Watts et al.," and pray that the said paragraphs be taken as part of this answer, as fully as if they and each of them were here copied.

The following table gives, as an illustration of the fact that the valuation of the plaintiff's property for 1920 was by no means so great a proportionate increase over the assessment for 1919 as were the corresponding increases of the assessment of real property in general even after the allowance of the reductions therein made pursuant to the Act of 1921, the figures for the counties in which are located property of the plaintiff of the assessments of which it now complains. The table shows the assessment of real property in each county for 1919, the percentage reduction allowed upon the 1920 assessment, and the assessment for 1920 as reduced by that percentage or the assesment as it is for 1921:

County.	1919.	Reduction.	1920, less reduction (1921).
Chatham	$4,082,437	None	$11,813,037
Forsyth	14,234,803	None	72,197,173
Guilford	18,884,912	None	85,158,132
Lee	2,735,578	33⅓	5,803,313
Randolph	5,390,639	33⅓	12,312,203
Rockingham	8,399,673	25	35,860,033
Stokes	2,618,965	33⅓	7,248,774
Surry	5,796,250	25	13,896,709

The defendants further pray that reference be had to Exhibit "A" attached to their answer to the complaint of the Southern Railway in suit above referred to, and be made a part of this answer, to show that on an average real property in general in the State was raised three times the assessment for 1919 when reassessed under the Revaluation Act for 1920.

(9) Answering the allegations of article six, section (9) of the complaint, the defendants refer to article nine of their answer to the complaint of the Southern Railway Company in the suit above referred to, and pray that the said article be taken as a part of this answer as fully as if it were here copied.

(10) It is denied that the values of the property of plaintiff depend upon the fluctuating values of other property in the State as affected by temporary advances and declines. It is denied that the business of the plaintiff fluctuates directly or in any corresponding proportion with the values of farm lands, other real property, or the prosperity of the State it serves for any one year or temporary period of time. It is denied that the plaintiff's property has decreased in value in 1921. Although the value of the use of the plaintiff's property may have been temporarily depressed, this is only a temporary condition, and there has been no corresponding depression in the value of the plaintiff's permanent property, and the plaintiff is entitled to no reduction in its taxable values, and the failure to make

such reduction is denied to be discrimination or contrary either to the uniformity clause of the Constitution of North Carolina or to the Fourteenth Amendment to the Constitution of the United States.

The defendants further aver that the assessed values of real estate in general, especially farm lands, had been raised under the revaluation in some instances from 300 to 500 per cent. As hereinbefore stated, such real property was raised in valuation about three times on an average. The plaintiff's railroad property assessment was only about doubled, however. After allowing the reductions made in many counties pursuant to the Act of 1921 it still is the fact that real property generally stands at an increased value very much greater in comparison than the increased value assessed on the plaintiff's property. It is impossible, therefore, that there is any discrimination against the plaintiff. As showing this reference is made to the table set forth in paragraph (8) of this article of this answer, and to Exhibit "A" attached hereto and to the answer of these defendants to the complaint of the Southern Railway Company in the suit brought by that company above referred to.

Moreover, the plaintiff's passenger and freight rates were raised respectively 20 and 25 per cent at the very time when farmers, far from enjoying increased prices for their products, were actually suffering disastrous losses, due to the fact that the selling prices of products of land had so suddenly and violently decreased that such products failed to bring enough return nearly to pay the cost of production. The values of farm lands sank sharply with the prices of the products of such land, and their decline furnishes no analogy from which the conclusion can be drawn that values of railroad properties declined and the assessments thereof should be reduced. The defendants aver that at any time when it is not making a return on its investment the plaintiff may apply to the Interstate Commerce Commission for an increase of rates, but farmers and landowners have no such forum in which they may seek a remedy to relieve them against the disastrous losses which they have suffered, due to depressed prices of farm products.

(11) Answering the allegations of article six, section (11) of the complaint, the defendants refer to article eleven of their answer to the complaint of the Southern Railway Company in the suit above referred to, and pray that the said article be taken as a part of this answer, with the exception that the petition of the plaintiff to the Commissioner of Revenue for a review of the 1920 assessment was made through the plaintiff's owner, the Southern Railway Company, and it was represented in the said hearing by its said owner.

(12) Answering the allegations of article six, section (12) of the complaint, the defendants refer to article twelve of their answer to the complaint of the Southern Railway Company in the suit above referred to, and pray that the said article be taken as a part of this answer as fully as if it were here copied.

(12½) Answering the allegations of article six, section (12½), the same being an amendment to the complaint, the defendants

1
4
5

refer to article twelve and a half of their answer to the complaint of the Southern Railway Company in the suit above referred to, and pray that the said article be taken as part of this answer as fully as if it were here copied.

(13) The allegations of article six, section (13) of the complaint are denied. The defendants allege that it is perfectly competent for the State of North Carolina, after taxing the property of the plaintiff ad valorem, to levy upon the plaintiff an additional tax for the privilege of engaging in intrastate commerce in this State and an additional income tax of three per cent on its net income, which said income tax is levied equally upon all other corporations without discrimination.

(14) The allegations of article six, section (14) of the complaint are denied.

(15) It is admitted that the plaintiff will owe to the State, counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment of its property for taxes in the State of North Carolina, and the defendants aver that the said legal assessment is that fixed for 1920 to 1923, inclusive, and as approved by the General Assembly and adopted for those years.

(16) Answering the allegations of article five, section (16) of the complaint, it is denied that the said assessment is illegal, and it is denied that this suit is brought to avoid a multiplicity of suits. It is denied that the said assessment is invalid; it is denied that unless the tax-collecting officers of the several counties and municipalities are restrained, they will proceed to collect any illegal tax upon any illegal assessment. On the other hand, the defendants aver that the taxes which the said officers will proceed to collect are valid and lawful; that they of right will become a first lien upon the property of the plaintiff in North Carolina if not paid as is the case with taxes upon all real property; it is denied that the said rightful lien will constitute a cloud upon the title to the said property against which equity should grant relief; it is denied that the plaintiff will be damaged by the remedies for collection of the said lawful and valid taxes, and it is denied that the plaintiff has no adequate remedy at law.

Prayer.

Wherefore, having fully answered the complaint filed in this suit, the defendants pray the court that every and singular the prayers of the said complaint be denied, and that the same be dismissed at the costs of the plaintiff.

JAS. S. MANNING,
Attorney-General of North Carolina;
FRANK NASH,
Assistant Attorney-General of North Carolina,
Solicitors for the Defendant.

WM. P. BYNUM,
GEO. H. BROWN,
LOCKE CRAIG,
THOS. D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

A. D. Watts, being duly sworn, says that he is one of the defendants in the above-entitled suit; that he has read the foregoing answer to the complaint, and that it is true of his own knowledge, except as to matters therein stated on information and belief, and as to them he believes it to be true.

A. D. WATTS.

Sworn to and subscribed before me this 11th day of November, 1921.

W. P. STACY,
Associate Justice N. C. Supreme Court.

EXHIBIT "A"

Comparative Statement of Taxable Values for the Years 1919 and 1920, Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral and Quarry Properties, Average Value Per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed With County Supervisors. (Note.—This Statement Does Not Include Railroad and Public Service Corporations, Banks, and Corporate Excess Assessed by the State Tax Commission.)

Counties	No. Acres Land	Value of Land, Timber Manufacturing Properties, Mineral and Quarry	Average Value Per Acre	Value of Town Lots	Total Value of Real Estate	Total Value of Personal Property	Aggregate Value of Real and Personal Property
Alamance, 1919	257,742	$ 2,786,845	$ 10.81	$ 2,058,055	$ 6,844,638	$ 5,522,968	$ 11,377,606
Alamance, 1920	282,836	9,966,036	37.92	7,159,464	24,934,832	10,537,710	35,472,542
Alexander, 1919	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920	165,761	4,864,835	29.30	681,423	6,527,000	1,958,286	8,485,286
Alleghany, 1919	143,309	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919	328,634	2,663,406	8.11	964,030	4,379,115	2,781,961	9,161,076
Anson, 1920	329,715	10,529,114	31.93	2,855,697	13,384,811	6,821,284	20,216,095
Ashe, 1919	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920	130,932	3,863,827	29.51	308,197	4,793,754	1,133,923	5,927,683
Beaufort, 1919	379,913	3,422,611	9.00	2,534,192	8,385,173	4,231,976	12,567,149
Beaufort, 1920	398,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919	450,883	3,040,339	6.76	882,130	4,055,850	3,467,857	7,523,746
Bertie, 1920	460,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
Bladen, 1920	534,585	10,092,338	19.24	794,790	11,630,040	3,418,325	15,048,365

Brunswick, 1919	476,230	2,406,553	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920	502,893	5,477,845	10.90	970,035	7,953,027	2,617,305	9,570,332
Buncombe, 1919	312,643	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797
Buncombe, 1920	.....	.....	.....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920	316,304	7,164,477	22.65	1,932,615	11,047,773	4,793,304	15,841,076
Cabarrus, 1919	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920	222,038	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919	227,055	1,809,693	7.97	660,221	3,802,721	2,142,059	5,944,780
Caldwell, 1920	258,296	7,792,632	30.17	2,896,422	13,257,243	4,456,030	17,713,273
Camden, 1919	145,857	1,083,289	7.42	58,807	1,298,061	672,229	1,970,290
Camden, 1920	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919	239,554	1,703,631	7.11	1,056,084	2,995,060	1,580,379	4,579,439
Carteret, 1920	233,162	7,972,149	34.19	1,650,790	10,405,239	2,940,095	13,345,434
Caswell, 1919	262,748	1,686,517	6.42	116,680	1,869,197	2,188,466	3,991,663
Caswell, 1920	268,746	8,743,808	32.54	209,340	9,053,148	2,920,697	11,973,845
Catawba, 1919	256,932	2,460,000	9.58	1,604,330	4,692,916	5,370,515	10,063,431
Catawba, 1920	254,423	12,339,006	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919	404,913	3,063,242	7.04	504,565	4,062,437	3,551,644	7,644,081
Chatham, 1920	435,773	10,063,238	23.09	1,243,459	11,813,037	4,594,017	16,407,054
Cherokee, 1919	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919	99,967	1,159,788	11.60	582,677	2,007,621	1,775,608	3,783,229
Chowan, 1920	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919	278,305	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920	277,843	16,422,057	59.11	4,554,698	28,168,738	11,168,258	39,337,062
Columbus, 1919	458,631	3,429,046	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920	.....	.....	.....	.....	15,789,229	6,600,009	22,389,229
Craven, 1919	364,212	2,421,364	6.65	4,354,543	7,617,226	4,097,447	11,714,673
Craven, 1920	323,112	15,488,629	47.94	13,256,829	28,745,458	9,352,494	38,097,952
Cumberland, 1919	238,497	3,116,070	9.21	2,513,375	6,848,011	4,990,251	11,838,262
Cumberland, 1920	358,317	12,835,535	35.82	7,393,804	20,822,630	7,567,734	28,090,773
Currituck, 1919	148,426	1,513,584	10.20	.....	1,733,291	705,677	2,438,968
Currituck, 1920	125,080	4,541,124	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1919	208,400	494,819	2.37	100,929	626,963	301,642	928,605
Dare, 1920	.....	.....	.....	.....	2,282,743	593,808	2,876,551
Davidson, 1919	35,442	.....	.....	.....	6,997,305	3,806,554	10,763,859
Davidson, 1920	255,066	15,295,783	.....	6,611,775	30,638,102	9,691,905	40,330,005
Davie, 1919	160,640	1,529,050	9.52	358,539	2,294,489	3,043,548	5,338,017
Davie, 1920	182,796	7,234,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894

COMPARATIVE STATEMENT OF TAXABLE VALUES FOR THE YEARS 1919 AND 1920—Continued.

Counties	No. Acres Land	Value of Land, Timber, Manufacturing Properties, Mineral and Quarry	Average Value Per Acre	Value of Town Lots	Total Value of Real Estate	Total Value of Personal Property	Aggregate Value of Real and Personal Property
Duplin, 1920	457,270	$ 23,071,185	$ 50.45	$ 1,100,364	$ 24,211,549	$ 7,285,518	$ 31,497,067
Durham, 1919	178,534	3,580,252	19.99	8,021,399	14,777,121	20,806,813	35,583,934
Durham, 1920	182,606	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	303,562	4,131,420	13.60	3,056,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,680	2,871,776	12.45	9,548,925	14,234,803	22,223,157	36,457,960
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,498	9,172,692
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,709	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,306	8,192,856	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,286	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,985,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	226,225	5,631,242	1,663,562	7,294,804
Graham, 1919	177,414	984,505	5.55	28,350	2,132,968	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,969,726	1,337,240	6,306,976
Granville, 1919	319,516	2,839,542	8.88	1,267,066	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	28.20	3,463,640	16,068,145	6,775,835	22,894,030
Greene, 1919	159,389	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,468	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,567	48,173,439
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,589	5,425,881	10,168,771
Harnett, 1920	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919	321,154	3,037,607	9.45	1,779,567	6,120,975	2,762,717	8,883,692
Haywood, 1920	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,423,194
Hertford, 1919	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,689
Hertford, 1920	201,537	8,738,122	43.36	1,991,046	10,747,168	3,909,665	14,656,833

Hoke, 1919	224,703	2,129,767	9.48	300,364	2,653,091	2,020,935	4,574,026
Hoke, 1920	221,220	9,967,460	45.05	944,313	11,344,263	2,995,910	14,340,173
Hyde, 1919	275,961	1,540,190	5.58	40,220	1,619,250	1,071,108	2,690,358
Hyde, 1920	420,604	11,237,110	28.14	443,911	12,281,021	2,035,801	14,316,823
Iredell, 1919	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920	364,307	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919	291,748	1,553,849	5.33	188,013	2,168,634	1,993,645	4,162,280
Jackson, 1920	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919	481,734	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920	498,946	32,020,897	65.38	7,092,972	42,030,148	15,477,315	57,507,463
Jones, 1919	201,477	1,666,956	8.72	260,788	1,969,921	1,378,496	3,348,417
Jones, 1920	294,534	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919	155,723	1,467,390	9.42	926,313	2,735,378	2,144,202	4,879,580
Lee, 1920	163,139	6,712,608	41.15	1,019,619	8,706,469	3,371,944	12,078,413
Lenoir, 1919	222,375	2,305,289	9.92	2,320,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920	239,868	20,753,505	86.52	11,629,585	32,857,010	10,910,400	44,767,410
Lincoln, 1919	179,228	2,119,195	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920	193,391	7,804,532	38.80	2,000,709	12,484,088	5,417,219	18,901,307
Macon, 1919	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920	275,716	5,011,838	18.18	189,631	5,201,469	1,330,969	6,532,438
Madison, 1919	262,922	2,108,634	8.02	302,267	3,241,392	2,617,167	5,858,559
Madison, 1920	278,933	7,578,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,966,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	44.72	2,500,065	15,613,311	6,799,760	22,413,071
McDowell, 1919	254,751	----------	----	----------	2,675,963	1,042,156	3,718,119
McDowell, 1920	241,210	2,814,834	11.67	1,540,981	8,136,746	3,861,589	12,001,335
Mecklenburg, 1919	313,806	4,032,705	12.85	12,112,770	22,133,825	15,983,964	38,217,899
Mecklenburg, 1920	314,277	14,423,866	67.31	56,054,830	93,500,878	33,585,455	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,203	4,340,208	1,133,117	5,473,325
Montgomery, 1919	288,986	1,766,533	6.11	629,643	2,858,539	2,478,702	5,337,241
Montgomery, 1920	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
Moore, 1919	415,165	3,178,355	7.65	1,671,452	5,434,221	3,005,237	8,439,458
Moore, 1920	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
Nash, 1919	335,415	3,878,799	11.50	3,219,117	7,985,680	8,201,768	16,287,448
Nash, 1920	333,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
New Hanover, 1919	92,962	2,100,440	22.59	10,087,380	14,941,453	5,406,709	20,348,162
New Hanover, 1920	114,132	3,171,511	28.05	14,399,066	37,517,377	12,528,021	50,045,398
Northampton, 1919	318,278	3,795,130	11.64	623,790	4,463,235	4,436,914	8,900,149
Northampton, 1920	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
Onslow, 1919	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
Onslow, 1920	416,856	7,308,697	20.60	992,585	10,807,997	2,780,647	13,584,644
Orange, 1919	241,018	1,951,878	7.78	1,051,230	3,916,209	3,078,757	6,994,966

COMPARATIVE STATEMENT OF TAXABLE VALUES FOR THE YEARS 1919 AND 1920—Continued.

Counties	No. Acres Land	Value of Land, Timber, Manufacturing Properties, Mineral and Quarry	Average Value Per Acre	Value of Town Lots	Total Value of Real Estate	Total Value of Personal Property	Aggregate Value of Real and Personal Property
Orange, 1920	244,404	$ 7,866,281	$ 32.19	$ 2,219,764	$ 10,086,045	$ 6,222,234	$ 16,308,279
Pamlico, 1919	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
Pamlico, 1920	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
Pasquotank, 1919	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
Pasquotank, 1920	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
Pender, 1919	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
Pender, 1920	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
Perquimans, 1919	151,630	1,431,991	9.44	473,929	2,000,068	1,664,783	3,603,851
Perquimans, 1920	135,126	4,579,632	33.89	1,035,330	5,739,609	2,359,005	8,098,714
Person, 1919	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
Person, 1920	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,076,796
Pitt, 1919	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
Pitt, 1920	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,301	61,871,989
Polk, 1919	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
Polk, 1920	130,925	3,221,221	24.61	403,878	5,043,541	3,691,363	8,734,904
Randolph, 1919	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920	489,717	13,352,406	27.27	2,843,531	18,468,305	7,049,532	25,517,837
Richmond, 1919	271,637	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,782
Richmond, 1920	298,155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919	508,290	5,661,400	11.14	2,326,589	9,063,675	8,063,294	17,126,969
Robeson, 1920	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919	345,078	3,213,287	9.08	2,215,162	8,390,673	7,917,904	16,317,477
Rockingham, 1920	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919	530,046	3,850,395	7.26	678,681	4,529,778	4,864,205	9,403,983
Sampson, 1920	578,092	16,169,478	28.00	2,161,805	22,717,960	9,305,331	32,023,240
Scotland, 1919	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471

Stanly, 1919	228,929	1,794,885	7.84	1,109,296	4,727,603	2,962,460	8,711,172
Stanly, 1920	245,668	10,574,057	43.04	3,745,636	21,225,000	10,606,893	31,832,893
Stokes, 1919	274,915	2,364,379	8.60	212,216	2,618,945	3,512,301	6,131,246
Stokes, 1920	298,734	10,328,827	34.62	544,334	10,873,161	4,310,585	15,183,746
Surry, 1919	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845,186	26,374,605
Swain, 1919	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919	197,595	1,518,091	7.68	382,964	2,044,250	1,308,115	3,352,365
Transylvania, 1920	198,554	4,684,341	23.59	462,625	5,304,466	2,597,049	7,901,515
Tyrrell, 1919	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830
Union, 1919	389,203	2,975,210	7.65	1,714,833	5,092,979	6,205,125	11,298,104
Union, 1920	392,429	15,605,830	39.77	4,671,356	21,444,971	10,172,675	31,617,646
Vance, 1919	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,165	10,121,586
Vance, 1920	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,725	26,519,291
Wake, 1919	531,678	5,708,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920	506,877	23,181,356	45.73	25,987,726	53,739,585	18,726,589	73,900,221
Warren, 1919	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919	200,868	1,586,729	7.90	501,589	2,180,780	1,556,516	3,737,296
Washington, 1920	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919	207,881	1,632,908	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920	217,097	6,750,358	31.09	501,234	8,820,897	2,449,708	11,240,606
Wayne, 1919	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920	339,270	27,607,644	81.37	14,860,093	47,323,132	17,666,582	64,989,714
Wilkes, 1919	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920	469,130	7,909,140	17.05	880,767	12,352,003	4,357,959	16,709,962
Wilson, 1919	223,631	2,866,661	12.82	3,109,243	6,333,509	9,005,000	15,338,509
Wilson, 1920	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,542	60,470,842
Yadkin, 1919	211,977	1,999,300	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919	174,935	1,142,880	6.53	83,079	1,335,074	1,204,819	2,539,893
Yancey, 1920	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

[Endorsed:] File No. 28,883. Supreme Court U. S., October Term, 1922. Term No. 369. Atlantic & Yadkin Railway Company Appellant, vs. A. D. Watts et al. Stipulation and addition to record. Filed October 4, 1922.

(7385)

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1922

No. [redacted]881

SEABOARD AIR LINE RAILWAY COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE OF THE STATE OF NORTH CAROLINA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

FILED MAY 8, 1923.

(26,215)

(28,915)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 960.

SEABOARD AIR LINE RAILWAY COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE OF THE STATE OF NORTH CAROLINA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Prosecution bond	2	1
Bill of complaint	3	2
Service of complaint	34	22
Stipulation as to service	35	23
Subpœna and marshal's return on same	36	24
Clerk's certificate as to service	37	25
Application for interlocutory injunction	38	25
Notice of hearing	40	27
Service of notice of hearing	42	28
Order on application for interlocutory injunction	43	28
Stipulation of counsel and interlocutory order	44	29
Motion to dismiss	47	31
Order continuing motion to dismiss	48	32
Answer	49	33
Exhibit A—Comparative statement of taxable values	71	49
Affidavit of W. L. Stanley	74	56
Affidavit of H. W. Mackenzie	83	62

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 25, 1922.

	Original.	Print.
Additional affidavit of H. W. Mackenzie	90	63
Affidavit of Geo. M. Phifer	91	64
Affidavit of C. J. O'Brien	106	66
Order for filing affidavit of members of former tax commission.	110	71
Affidavit of members of former tax commission	111	71
Report of State Tax Commission on revaluation	118	76
Opinion *per curiam*	129	95
Order denying interlocutory injunction	133	98
Notice of application for appeal and stay of proceedings	134	99
Assignment of errors	135	100
Order continuing hearing of application for appeal and stay	139	103
Order denying stay	140	104
Stipulation of counsel as to record	141	105
Memorandum of original papers certified separately	142	106
Order to transmit record	143	106
Clerk's certificate	144	107
Application for appeal and stay	145	107
Order allowing appeal	148	109
Bond on appeal	150	110
Citation and service	152	111

1 TRANSCRIPT OF RECORD.

In the District Court of the United States for the Eastern District of North Carolina.

At a District Court of the United States for the Eastern District of North Carolina begun and held at the court house, in the city of Raleigh, on the first Monday of March, being the sixth day of the same month, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable Henry G. Connor, Judge of the District Court for the Eastern District of North Carolina.

Among others were the following proceedings, to-wit:

In Equity.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, and Others.

2 *Prosecution Bond.*

Filed Nov. 29, 1921.

In the District Court of the United States for the Eastern District of North Carolina, at Raleigh.

In Equity.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Commissioner of Revenue of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; Baxter Durham, State Auditor of North Carolina; James S. Manning, Attorney General of North Carolina, et al., Defendants.

Prosecution Bond.

Know all men by these presents, that we, Seaboard Air Line Railway Company, as principal, and Royal Indemnity Company, as surety, are held and firmly bound unto the defendants in the above entitled action in the sum of Two Hundred Dollars ($200.00), to the payment of which we bind ourselves firmly by these presents.

Sealed with our seals and dated this 29th day of November, 1921.

The condition of the above obligation is such, that whereas the plaintiff in the above named cause has brought an action against the said defendants therein; Now, if the said plaintiff shall prosecute its said action with effect, or, in case it fail therein, shall well and truly pay all such costs as shall be awarded and recovered against the said plaintiff in said action, then the above obligation is to be void, otherwise it is to remain in full force and effect.

SEABOARD AIR LINE RAILWAY COMPANY, [SEAL.]
(S.) By MURRAY ALLEN,
Attorney.
ROYAL INDEMNITY COMPANY, [SEAL.]
(S.) By CHAS. E. JOHNSON, JR.,
Attorney in Fact.

3 *Bill of Complaint.*

Filed Nov. 29, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Commissioner of Revenue of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; Baxter Durham, State Auditor of North Carolina; James S. Manning, Attorney General of North Carolina, et al., Defendants.

To the Honorable H. G. Connor, Judge of the District Court of the United States for the Eastern District of North Carolina:

Seaboard Air Line Railway Company, a corporation duly organized and existing under the laws of the States of Virgina, North Carolina and South Carolina, and a citizen of the said states, brings this, its Bill of Complaint against Augustus D. Watts, Commissioner of Revenue of North Carolina, a citizen of the State of North Carolina, whose official residence as Commissioner of Revenue of North Carolina is at the City of Raleigh in said state and in the Eastern District thereof, and Benjamin R. Lacy, Treasurer of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State, and Baxter Durham, Auditor of the State of North Carolina, and a citizen and resident of the
4 County of Wake in the Eastern District of said State, and James S. Manning, Attorney General of the State of North

Carolina and a citizen and resident of the County of Wake in the Eastern District of said State;

J. W. Cooper, Sheriff of Bertie County, North Carolina;
J. M. Clarke, Sheriff of Bladen County, North Carolina;
F. L. Lewis, Sheriff of Brunswick County, North Carolina;
G. W. Blair, Sheriff of Chatham County, North Carolina;
J. O. Ammons, Sheriff of Columbus County, North Carolina;
John F. Harward, Sheriff of Durham County, North Carolina;
H. A. Kearney, Sheriff of Franklin County, North Carolina;
E. D. Hunt, Sheriff of Granville County, North Carolina;
J. A. House, Sheriff of Halifax County, North Carolina;
L. C. Rosser, Sheriff of Lee County, North Carolina;
D. A. Blue, Sheriff of Moore County, North Carolina;
George C. Jackson, Sheriff of New Hanover County, North Carolina;
H. L. Joyner, Sheriff of Northampton County, North Carolina;
R. L. McDonald, Sheriff of Richmond County, North Carolina;
R. E. Lewis, Sheriff of Robeson County, North Carolina;
W. D. McLaurin, Sheriff of Scotland County, North Carolina;
John S. Royster, Sheriff of Vance County, North Carolina;
D. B. Harrison, Sheriff of Wake County, North Carolina;
R. E. Davis, Sheriff of Warren County, North Carolina;

citizens and residents of the State of North Carolina and of the respective counties in said State named above, and in the Eastern District thereof,

W. S. Braswell, Sheriff of Anson County, North Carolina;
H. A. Logan, Sheriff of Cleveland County, North Carolina;
J. W. Carroll, Sheriff of Gaston County, North Carolina;
W. B. Abernethy, Sheriff of Lincoln County, North Carolina;
W. O. Cochrane, Sheriff of Mecklenburg County, North Carolina;
J. W. Beason, Sheriff of Rutherford County, North Carolina;
Clifford Fowler, Sheriff of Union County, North Carolina;

citizens and residents of the State of North Carolina and of the respective counties in said State named above and in the Western District thereof; and the following citizens of North Carolina, who hold the office of Tax Collector of the city or town of North Carolina appearing opposite their respective names, each of whom is sued as such Tax Collector:

D. I. McKeithen, Aberdeen;
A. D. Cashwell, Abbottsburg;
C. Bullard, Acme;
S. T. Bennett, Apex;
—— ——, Bladenboro;
L. B. McKeithen, Cameron;
Joseph Lowe, Cary;
—— ——, Clarkton;
—— ——, Councils;

J. T. Curl, Creedmore;
J. R. Patton, Durham;
R. B. English, E. Laurinburg;
E. H. Evans, Franklinton;
W. E. Mudd, Gibson;
E. H. Mahone, Hamlet;
S. B. Burwell, Henderson;
Thomas Ascue, Kelford;
J. B. Whitley, Kittrell;
J. I. Covington, Laurinburg;
W. A. Woodfin, Littleton;
H. A. Kearney, Louisburg;
J. P. Russell, Lumberton;
Henry Haithcock, Macon;
A. J. Steed, Maxton;
W. H. Parrish, Middleburg;
O. B. Cook, Norlina;
R. B. Hines, Oxford;
A. M. Breece, Pembroke;
6 F. H. Noole, Pittsboro;
D. McGlachlin, Pinebluff;
P. L. Grant, Rich Square;
S. E. Covington, Rockingham;
Lyman Holloman, Roxobel;
C. L. Gunter, Sanford;
Mrs. J. H. Tilghman, Southern Pines;
W. D. Smith, Vass;
P. E. Fowler, Wake Forest;
J. W. Pierce, Weldon;
B. H. Dewey, Wilmington;
J. B. Young, Youngsville;

all citizens and residents of the Eastern District of North Carolina; and

J. D. Clemmer, Bostic;
C. M. Creswell Charlotte;
W. C. Hicks, Cherryville;
W. L. Carpenter, Crouse;
N. O. Whitaker, Ellenboro;
A. C. Keeter, Forest City;
Thomas Morris, Indian Trail;
D. A. Hamrick, Lattimore;
Spurgeon Sedberry, Lilesville;
R. H. Dellinger, Lincolnton;
Z. B. Griffith, Marshville;
W. L. Hood, Matthews;
James McNeeley, Monroe;
Thomas Dunn, Mt. Holly;
Carl Gaddy, Peachland;
F. L. Autry, Polkton;
A. P. Hill, Rutherfordton;
B. O. Hamrick, Shelby;

A. G. Lay, Stanley;
J. K. Willis, Waco;
L. D. Rivers, Wadesboro;
W. M. Crow, Waxhaw;
7 T. L. Brewer, Wingate;

all citizens and residents of the Western District of North Carolina; and

H. L. Bell, Tax Collector, Roanoke Rapids Township, Halifax County, North Carolina;
G. W. King, Tax Collector, Littleton Township, Halifax County, North Carolina;
J. E. Branch, Tax Collector, Weldon Township, Halifax County, North Carolina;

citizens and residents of the Eastern District of North Carolina; and

G. S. Mays, Tax Collector, District No. 1, Mecklenburg County, and of Special School Districts No. 2 and No. 5 of Paw Creek Township, and of School District No. 1, Craborchard Township, Mecklenburg County, North Carolina;
W. O. Cochrane, Tax Collector, District No. 2, Mecklenburg County, and of Morning Star Township, and of Sharon Township, Mecklenburg County, North Carolina, citizens and residents of the Western District of North Carolina.
Parks Kirkpatrick, Tax Collector, District No. 3, Mecklenburg County, and of Morning Star Township and of Sharon Township, Mecklenburg County, North Carolina, citizens and residents of the Western District of North Carolina.

And complainant respectfully represents that:

1. The complainant is now, and was at all times hereinafter mentioned, a corporation duly organized and existing under the laws of Virginia, North Carolina and South Carolina, and it now does, and did at such other times hereinafter mentioned, own, operate, manage and control lines of railroad and other property in connection therewith in and through the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, and it is now, and was at all such other times, engaged in operating said lines of railroad in interstate commerce. The complainant's lines of railroad located in the State of North Carolina traverse the counties, cities, towns and other local subdivisions above named in said State.

8 2. The defendant, Augustus D. Watts, is Commissioner of Revenue of the State of North Carolina, duly appointed by the Governor of North Carolina, and under and by virtue of Chapter 40 of the Public Laws of North Carolina of 1921, and duly qualified under the laws of said State and is a citizen of North Carolina whose official residence as Commissioner of Revenue is at the City of Raleigh in said State and in the Eastern District thereof; that the defendant, Benjamin R. Lacy, is the State Treasurer of the State of

North Carolina, duly elected and qualified under the laws of said State and is a citizen and resident of the County of Wake in the Eastern District of said State; that the defendant, Baxter Durham, is the State Auditor of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State; that the defendant, James S. Manning, is Attorney General of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State. The other defendants are citizens and residents of the respective counties, cities, towns or local subdivisions in which they are the Sheriffs or Tax Collectors and they are residents of the Eastern or Western Districts of North Carolina in accordance with the location of the said counties, cities, towns or other local subdivisions in the said Eastern or said Western District, as hereinbefore set out. The said defendants, Augustus D. Watts, Benjamin R. Lacy, Baxter Durham and James S. Manning are charged with the duty of levying, assessing and collecting the tax which the State of North Carolina asserts is due to it by the complainant and the other defendants are charged with the duty of collecting the taxes levied in their respective counties, cities, towns and other local subdivisions. More particular reference to the taxes involved in this suit will presently be made.

3. This is a suit in equity and arises under the Constitution and laws of the United States, as will presently more fully appear, and the amount in controversy, exclusive of interest and costs as will hereinafter be specifically shown, exceeds the sum and value
9 of Three Thousand Dollars ($3,000.00). The complainant brings this suit to restrain the defendants from levying, assessing and collecting certain taxes upon the complainant and its property in North Carolina under color of the several statutes of North Carolina hereinafter mentioned. The complainant respectfully shows that unless the defendants and all of them be restrained from enforcing collection of said taxes, it will be deprived of privileges and immunities guaranteed and secured to it by the Constitution of the United States and the Fourteenth Amendment thereof; and further, that it will be deprived of its property without due process of law and will likewise be denied the equal protection of the law, in contravention of the Constitution of the United States and the Fourteenth Amendment thereof; the complainant also shows that the taxes sought to be imposed by virtue and under the authority of the North Carolina statutes constitute a direct burden upon interstate commerce in violation of the Commerce Clause of the Federal Constitution.

4. The complainant shows that the provisions of the Constitution of North Carolina affecting the taxation of itself and other railroad corporations are as follows: Section 3 of Article 5 of the North Carolina Constitution provides, in part:

"Sec. 3. Taxation shall be by uniform rule and ad valorem: Exemptions. Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies,

or otherwise; and also all real and personal property, according to its true value in money * * * The General Assembly may also tax trades, professions, franchises and incomes. * * *"

Section 6 provides:

"Sec. 6. Taxes levied for counties. The total of the state and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the state for the term required by article nine, section three, of the constitution: Provided, further, the state tax shall not exceed five cents on the one hundred dollars value of property."

Section 9 of Article 7 of the Constitution of North Carolina provides as follows:

"All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same except property exempted by this Constitution."

5. The complainant shows that prior to May 1st, 1921, the North Carolina Corporation Commission was constituted the State Tax Commission and charged with the duty of valuing for taxation purposes the property of railroads, including that of the complainant, and of imposing, levying, assessing and collecting taxes upon railroad property. The said Corporation Commission derived its powers from Chapters 21 and 131 of the North Carolina Consolidated Statutes of 1919, the Revenue and Machinery Acts of 1919, the Revenue Act passed at the special session of the North Carolina Legislature of 1920, and the Revenue and Machinery Acts of 1921. Reference is prayed to all of these statutes.

Under an Act of the Legislature of North Carolina, ratified on the 8th day of March, 1921, Chapter 40, Public Laws of North Carolina, Session 1921, page 288, the powers and duties of the State Tax Commission were transferred and imposed upon the Commissioner of Revenue.

Under Sections 62, 62*a* and 63 of the Act of the Legislature of North Carolina, approved March 8, 1921, page 225 of the Public Laws of North Carolina, Session 1921, at page 263 (hereinafter referred to as the Machinery Act), it is provided that railroad companies must file certain returns.

11 Under Section 64 of the said Machinery Act, it was made the duty of the Commissioner of Revenue, at such dates as real estate is required to be assessed for taxation, to first determine the value of the tangible property of each division or branch of such railroad, of rolling stock, and all other physical or tangible property.

Section 64 then provides:

"This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions to be considered as in the case of private property."

Section 64 also provides:

"They (referring to the State Tax Commission for which there was thereafter substituted the Commissioner of Revenue as set forth above) shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property."

Section 64 also provides:

"The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certify on or before the first day of September, to the chairman of the county commissioners
12 and the mayor of each city or incorporated town the amount apportioned to his county, city or town."

Secion 65 of the Machinery Act provides for a proportional valuation of interstate railroads in the proportion which the length of the main line of road in the State of North Carolina bears to the whole length of such main line of road, and to determine the value in the State of North Carolina accordingly. Said section contains the following proviso:

"Provided, the Commission shall, in valuing the fixed property in this state, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this state, and any other factor which would give a greater or less value per mile of road in this state than the average value for the entire system. On or after the first Monday in July, the said Commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said Commission may, if they see fit, require all argument and communications to be presented in writing."

Section 82 (6½) of an Act entitled "An Act to Raise Revenue" approved March 8, 1921, page 147 of the Public Laws of North Carolina, Session 1921, at page 193, hereinafter called the Revenue Act, provides as follows:

"Railroads. Every railroad company doing business in this state shall annually on or before the thirtieth day of July, make and return to the State Tax Commission in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require for the purpose of carrying out the provisions of this section and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of
13 taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this state shall be found to be the value of the property, tangible and inta-gible, of each such railroad company in the state assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this state shall be one-tenth of one per cent (0.1 per cent) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make report provided for, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city, or town shall be allowed to collect any taxes under this section."

Section 4 of the said Revenue Act provides, in part, as follows:

"Sec. 4. Corporation taxes payable to State Treasurer. Every corporation, joint-stock association, limited association, limited partnership, or company whatsoever, from which a report is required by law to be made to the Corporation Commission, shall be subject to and pay to the State Treasurer annually the franchise tax imposed by section 82 of this act; it shall be the duty of the State Auditor to mail to every such corporation a statement of the amount of such taxes, which statement shall contain a copy of so much of this section as relates to penalty as notice of penalty for failure to
14 pay said taxes; and it shall be the duty of the treasurer or other officer having charge of any such corporation, joint-stock association, or limited partnership upon which a tax is imposed to transmit the amount of the tax to the State Treasurer within thirty days from the date of such notice. If such tax is not paid by the first day of November, it shall be the duty of the Auditor to send, not later than November fifteenth, final notice to such delinquent corporation that penalty will be imposed if payment is not made as required by this section. If the said tax is not paid by the first day of December next following, the State Treasurer shall certify to the State Auditor a complete list of all such taxes due and unpaid. The State Auditor shall add ten per centum to such taxes, and return to the State Treasurer, charging the State Treasurer with the amount

so added, and the State Auditor shall thereupon certify the same with such percentage added to the sheriff or tax collector of the county in which such delinquent corporation has its principal office, and charge such sheriff or tax collector with the amount so certified. Such certificate by the State Auditor to the sheriff or tax collector in any county shall have the same force and effect as a judgment and execution against the real and personal property of such corporation as is given by Machinery Act for the collection of other taxes, and it shall be the duty of the sheriff or tax collector to proceed to collect same by levy, advertisement, and sale, in the same manner as provided by law for the collection of other taxes."

And section 3 of the said Revenue Act provides, in part:

"No tax on any property in the State shall be levied for any of the uses of the State Government."

Section 14 of the Machinery Act provides as follows:

"The boards of county commissioners of the several counties of the State may, at any regular or called meeting, after the valuation of real and personal property has been completed as provided in this act, in the months of July, August, or September, levy such rate of tax for general county purposes as may be necessary to meet the general expenses of the county, not exceeding the constitutional limitation, and such rates for other purposes as may be authorized by law."

6. For the year 1919 the ad valorem assessment of the properties of complainant in the State of North Carolina was Twenty Million One Hundred Ninety-one Thousand Seven Hundred and Twenty Dollars ($20,191,720.00). In 1920 the State Tax Commission, under the Revaluation Act (Chapter 84, Public Laws of North Carolina, 1919) increased the assessment of said property for 1920 to Thirty-four Million, Seven Hundred Sixty-eight Thousand Four Hundred and Forty Dollars ($34,768,440.00), and complainant paid its taxes thereon to the State Treasurer under written protest. In 1921 the Revenue Commissioner at first assessed said properties at Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00). A hearing was had before the Revenue Commissioner and facts adduced showing that said valuation was in excess of the true "actual value" of the property as the said term is defined in Section 28(e) of the Machinery Act, reading in part as follows:

"The words 'actual value,' as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold."

This hearing resulted in the Revenue Commissioner adhering to the assessment of complainant's property at Thirty-four Mil-
16 lion Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00). The complainant petitioned the Commissioner of Revenue for a review of the assessment of its property by the State Board of Equalization. The Revenue Commissioner, under advice of the Attorney General, held that the complainant and other railroads had no appeal to the State Board of Equalization or any other body, but he reheard the matter himself and declined to change said assessment. However, on or about November 21st, 1921, the Commissioner of Revenue changed the assessment from Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00) to Thirty-four Million Seven Hundred Sixty-eight Thousand Four Hundred and Forty Dollars ($34,768,440.00). But in making the allocations to the counties, cities and towns, pursuant to Section 64 of the Machinery Act, the Commissioner used the value of Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00), instead of Thirty-four Million Seven Hundred Sixty-eight Thousand Four Hundred and Forty Dollars ($34,768,440.00). The complainant avers that the allocation is erroneous because it results in the apportionment to the counties and other local subdivisions of Sixty-six Thousand Two Hundred and Forty-five Dollars ($66,245.00) of value to which they are not entitled. Property assessed locally by the counties in the amount of Seven Hundred Fifty-three Thousand One Hundred and Eighty-five Dollars ($753,185.00) was deducted by Commissioner before making the allocation under said Section 64 of the Machinery Act as is required by that section. And as the amount of Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00) is by the Commissioner's own action shown to be excessive by Sixty-six Thousand Two Hundred and Forty-five Dollars ($66,245.00), his allocation of Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00) even after de-
17 ducting the value of the property assessed locally is necessarily erroneous in that an excessive amount of Sixty-six Thousand Two Hundred and Forty-five Dollars ($66,245.00) has been apportioned to the counties and other local subdivisions.

7. The complaint further shows that for the reasons hereinafter stated the complainant's properties should not have been assessed at Thirty-four Million Seven Hundred Sixty-eight Thousand Four Hundred and Forty Dollars ($34,768,440.00), the valuation which the Commissioner has finally fixed.

Among other things it was provided in Chapter 38 of the Public Laws of 1921, as follows:

"Sec. 28 (*a*). County Boards to review valuation of real estate. "The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen, (any vacancy which may have occurred to be filled by appointment of the

board of county commissioners), shall meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of real property as heretofore appraised and assessed in the county as a whole is in excess of the fair value of such property at the time of meeting of such board. The chairman of the board of county commissioners shall be the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be secretary of the said board. The said board shall make proper inquiry and investigation into the existing values of real property as compared with the assessed and appraised values thereof in the several cities, towns and townships of the county, and if it shall find that the assessed value of such property is in excess of the actual value, it shall find the average percentage of such excess in the county as a whole, or in the several cities, towns and
18 townships, and shall report its findings so made to the State Tax Commission not later than the twentieth day of April, one thousand nine hundred and twenty-one. The values so reported shall be the values at which the property shall be assessed for taxation unless and until the same have been changed and revised by the State Tax Commission and certified to the board of county commissioners of such county, which shall be done not later than the first day of July, one thousand nine hundred and twenty-one.

"Sec. 28 (*b*) Specific Complaints.—The board of county commissioners of the several counties shall have and exercise authority to hear and determine specific complaints of over-valuation or under-valuation of any particular tracts of real property, and after the general equalization order provided for in the preceding subsection has been made, any person who owns property subject to taxation and who finds that said property stands assessed for taxation, after such equalization order has been made at an amount in excess of the actual value of such property on the first day of May, one thousand nine hundred and twenty-one, may have the right to have the same re-assessed and reappraised by the said board by filing with the clerk of the board of county commissioners some time during the month of May, one thousand nine hundred and twenty-one an application in form and substance as follows:

To the Board of County Commissioners, —— County:

I hereby make application for the re-assessment of the real property hereinafter described, for the reason that the said property is now assessed in excess of its actual value on the first day of May, one thousand nine hundred and twenty-one, and do hereby certify
19 that in my best judgment the actual value of said property on that date was as it is stated herein to be:

Location, ——.
Condition, ——.
Acreage, ——.
Assessed Value, ——.
Actual Value May 1, 1921, ——.

—— ——.
(Signature of Complainant.)

Any citizen of the county may file complaint of the under-valuation of any real property in the county, or the board may of its own motion revise the valuation of any property that it finds to be valued at more or less than the actual value of such property on the first day of May, one thousand nine hundred and twenty-one.

The county board of commissioners may appoint the county auditor or any resident freeholder of the county, who has general knowledge of the value of the real property of the county, to investigate any and all complaints filed under the provisions of this section, and make report and recommendations to the said board as to the true value in money of such properties. The county board of commissioners shall thereupon approve or revise such recommendations, and shall, not later than the fifteenth day of July, one thousand nine hundred and twenty-one, make report to the State Tax Commission of the increases and reductions in the valuation of specific properties made under authority of this section.

Sec. 28 (*c*). If the board of county commissioners of any county, at their regular monthly meeting on the first Monday in April, one thousand nine hundred and twenty-one, shall be of the opinion that the valuation of real estate in such county is so unequal as between the owners of real property in such county as to require a more general revision of assessments than is practicable to be made under the provisions of subsections (*a*) and (*b*) of this section, or the value of real property as heretofore appraised in such county as a whole is in excess of the present actual value of such property, it may by resolution so find and order that such revision be made. In the event such order is made, it shall be in lieu of the remedies provided in subsections (*a*) and (*b*) of this section, and the board of county commissioners shall appoint a board of review, composed of three resident freeholders, who have general knowledge of the value of real estate in such county and such board of review may appoint such number as assistants as in their judgment is necessary to complete such revision, not later than the first day of July, one thousand nine hundred and twenty-one. The said board shall take and subscribe to an oath to perform their duties according to the provisions of this act according to the best of their ability, and shall give notice by public advertisement that the board, or one of its members or assistants, will attend at least one day in each township, and as long as shall be necessary to hear evidence as to the true value of the real property therein, and of any property over-valued or under-valued; and the said board shall proceed as speedily as possible to hear and determine what the present true value thereof is, and to make such general review and revision of the assessed value of real property in such county as it finds is necessary to be made, to the end that the same may be fairly and equally assessed, at its present actual value in money. A complete abstract of such revised assessment, by townships, giving average, value per acre, and value of town lots, and the value as a whole, shall be made to the board of county commissioners of such county and to the State Tax Commission, not later than the fifteenth day of July, one thousand nine hundred and

twenty-one, and shall be subject to the authority of the State Tax Commission as a State Board of Equalization, so as to preserve
21 a proper equalized value of real property in the several counties. The board of county commissioners shall fix the expense that may be incurred under this section, such expense to be borne by the county.

"Sec. 28 (*d*). The report of the board of county commissioners, made pursuant to section twenty-eight (*b*), and the abstracts as reported by the board of review under section twenty-eight (*c*), shall be the basis for the assessment of taxes, unless and until the same are changed by the State Tax Commission on or before the first day of September, one thousand nine hundred and twenty-one, and the State Tax Commission shall, on or before the first day of September, one thousand nine hundred and twenty-one, certify down to the board of county commissioners of the several counties, its findings and conclusions upon said report and abstracts.

"Section 28 (*e*). In any proceeding under this Act the county board of review or county board of commissioners, or any of their representatives, shall have access to the question-aires filed by the owners of the real property in the county under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen, the tax rolls for the several townships, and any other records pertaining thereto."

It shall be the duty of the State Tax Commission to exercise the authority of supervision herein imposed, to the end that, as nearly as may be, property of all classes in all counties of the state may be fairly and equally valued in accordance with the requirements of the Constitution and the provisions of this act, and if in any case in doubt as to whether changes in valuation in any county should be approved, it shall have the authority, and it shall be its duty, to make or cause to be made, such investigation as it may deem necessary to determine the facts and reach a just conclusion.
22 The words "actual value" as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold.

"Sec. 28 (*f*). Any taxpayer in any county may appeal, within thirty days, to the State Tax Commission, from any findings by the Board of County Commisioners.

"Sec. 28 (*g*). Any taxpayer owning property assessed originally by the State Tax Commission may make applicatin to the State Tax Commission for a review of the assessment of its property in the same manner herein provided for complaints by property owners before the county boards, and the State Tax Commission may hear and determine such complaints."

Acting in accordance with the authority imposed upon them by Section 28*a* of said Chapter 38 of the Public Laws of 1921 the Boards of County Commissioners and County Board of Appraisers and Review of the counties hereinbelow set out, appointed under Chapter 84 of the Public Laws of 1919, met jointly as provided in said statute, and within the time appointed therein, as the County Boards of Review, to determine if the value of real property, as heretofore appraised and assessed under said Chapter 84 of the Public Laws of 1919 in said counties, as a whole, was in excess of the fair value of such property at the time of the meeting of such boards, and after making inquiry and investigation into the excess of the assessed and appraised valuation of real property, in the several cities, towns and townships in said counties, as is provided in said section 28*a* found that the average percentage of excess in the said counties as a whole was as is in the next paragraph herein set out and reported their various findings to the State Tax Commission as provided in that section, and the said State
23 Tax Commission did not change or revise the said valuation. and, in accordance with the said section, the said percentage values so reported became the values at which the real property in said counties was assessed for taxation for the year 1921, the same being the percentage reduction in the value of such real property which had theretofore been assessed for taxation in the year 1920 under said Chapter 84 of the Public Laws of 1919.

The reductions made in said assessments and valuations of real property in the several counties, and in the several cities, towns and townships, therein through which complainant's line of railroad runs, for the year 1921, under the valuation and assessment of the year 1920, are as follows:

Anson	20% and 10% in towns.
Bertie	25%
Bladen	15%
Chatham	25%
Cleveland	15%
Durham	25%
Franklin	40%
Gaston	25%
Granville	33⅓%
Halifax	40%
Lee	33⅓%
Lincoln	35%
Mecklenburg	25%
Northampton	33⅓%
Rutherford	10%
Union	25%
Vance	33⅓%
Warren	33⅓%

In accordance with Section 28*c* of said Chapter 38 of the Public Laws of 1921, a re-valuation and new assessment was ordered and

made in the counties of Robeson, and Scotland of the real property in those counties and upn such revaluation the real property
24 in those counties was reduced by the following percentages under the assessment of the year 1920, to-wit:

Robeson	40%
Scotland	1.1%

And upon the certification of such revaluation to the said State Tax Commission and Board of Equalization no change was made by the said Tax Commission and said Board of Equalization and thereupon said revaluation so made by the said County Board of Review became the value of the real property in those counties for the year 1921 and assessments thereon were and are made in accordance therewith.

The Board of County Commissioners and County Board of Appraisers and Review of Brunswick, Columbus, Moore, New Hanover, Richmond and Wake Counties made no reduction and certified no reduction in those counties to the State Tax Commission.

Complainant avers that in assessing and valuing its property in North Carolina for the year 1921, the Commissioner of Revenue declined to give to complainant the benefit of any horizontal percentage reductions upon its real property which was allowed to other persons and corporations, and your complainant protested against said assessment and requested a hearing. A hearing was had before the said Commissioner of Revenue August 16, 1921, and facts were produced before him showing that such assessment so made by him was unfair, was discriminatory, and would be taking the property of your complainant without due process of law, and denying to it the equal protection of the law and was not uniform, and was not in accordance with said Chapter 38 of the Public Laws of 1921, and should be reduced in order to equalize the value of the complainant's property with that of other persons and corporations assessed for taxes for the year 1921 under the laws of North Carolina. Complainant avers that for the year 1920 its property as well as all other property was assessed at its true value within the meaning
25 of the tax statutes of North Carolina; that on account of the general depreciation in property values in North Carolina, the complainant's property should be assessed for taxation at a lower valuation for 1921 than it was for 1920. Complainant avers that the same conditions which brought about the reduction in the valuation of real estate in the counties wherein reductions were made apply with equal, if not greater, force to complainant's property. The deflation in property values was not confined to real estate of individuals but was general and affected the real estate of the complainant and its property generally, as well as all other property. Complainant avers that the counties made horizontal reductions or revaluations affecting the property in the counties as a whole and such horizontal reductions or revaluations were not based upon the reduced value of any particular parcel of real estate, but were based upon general conditions applicable to all alike and therefore the

complainant was entitled to the benefit thereof. Complainant shows that the average reduction made in 1921 assessment of real property generally under the 1920 assessment by the counties traversed by its line is approximately twenty-two per cent, and the complainant avers that its 1921 assessment should have been reduced by that proportion, at least, under its 1920 assessment. The complainant avers that the failure and refusal of the Commissioner of Revenue to grant the complainant a reduction in the assessment of its properties while the counties made a systematic reduction in the valuation of other real estate and property generally resulted in a discrimination against the complainant; and complainant avers that such discrimination is in contravention of Section 3 of Article 5 of the Constitution of North Carolina and likewise denies the complainant the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States.

8. The Commissioner of Revenue, pursuant to the authority which the aforementioned statutes, and particularly Section 64 of the said Machinery Act, purport to confer upon him, assessed
26 and valued the complainant's property in North Carolina at the sum and value of Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00); which amount was subsequently changed to Thirty-four Million Seven Hundred Sixty-eight Thousand Four Hundred and Forty Dollars ($34,768,440.00); the complainant is advised and believes that the defendants will under Sections 4 and 82 (6½) of the said Revenue Act attempt to levy and collect taxes from the complainant in the amount of Thirty-four Thousand Seven Hundred Sixty-eight Dollars and 44/100 ($34,768.44), this amount being one-tenth of one per cent of the valuation placed upon the complainant's property by the Commissioner of Revenue pursuant to said Section 64 of the Machinery Act and Section 82 (6½) purports to give the State of North Carolina the right to impose taxes at the rate just mentioned. And the complainant further avers that the various counties, cities, towns and other taxing subdivisions of North Carolina will, unless restrained from so doing, attempt to collect from the complainant taxes based upon their local rates of levy as applied to the erroneous and excessive valuation of the complainant's properties, the Commissioner of Revenue having, as has heretofore appeared, allocated or apportioned the excessive valuation of Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00) to the respective counties, cities and towns pursuant to Section 64 of the Machinery Act.

9. The complainant shows that the tax which Section 82 (6½) of the said Revenue Act purports to impose is not in reality a franchise tax or privilege tax, as the statute denominates it, based upon the value of the exercise of the complainant's franchise or privilege in North Carolina, but is in fact an ad valorem tax based upon the value of the complainant's property in the State. And as

such tax is, pursuant to Section 3 of the said Revenue Act, not levied upon other property in North Carolina, it is not levied by a uniform rule upon all property in North Carolina and, therefore, the
27 said Section 82 (6½) is unconstitutional and void because it is in contravention of Section 3 of Article 5 of the Constitution of North Carolina. The complainant further avers that the said Section 82 (6½) of the said Revenue Act, in that it imposes a tax upon the complainant's property without imposing a like tax upon the property of other owners, denies the complainant the equal protection of the law and deprives the complainant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

The complainant further avers that this so-called Franchise Tax violates the uniformity section of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States in that as to all other corporations it is measured by the capital stock, whereas as to railroads it is based upon the ad valorem value for taxation.

10. The complainant further avers that even if it is conceded the tax levied under Section 82 (6½) of the Revenue Act is a franchise tax, yet the said statute is nevertheless unconstitutional and void in that it is violative of the scheme of taxation which the North Carolina Constitution contemplates. That instrument by necessary intendment contemplates a dual system of taxation, one set of taxes being leviable by the State and the other by the counties. The complainant therefore avers that the scheme of taxation brought about by Sections 3 and 82 of the Revenue Act whereunder the State derives its entire revenue from corporations, while Section 3 of such Act exempts the property of all other owners from taxation for State purposes, is unwarranted by the State Constitution which mandatorily requires that all property shall bear its just proportion of the taxation burden. The complainant avers that the North Carolina Legislature had no power to exempt a large class of property from liability to State Taxation and recoup the loss of revenue thereby occasioned by imposing the entire burden upon the properties of corporations. Such a method or scheme of taxation is plainly
28 at variance with that intended to be established by the Sections of North Carolina Constitution hereinbefore mentioned, and consequently Section 82 (6½) which attempts to impose a part of this additional taxation burden upon the complainant is therefore void. The complainant further avers that the said Section 82 (6½) of the said Revenue Act, in that it imposes a tax upon the property of the complainant without imposing a like tax upon the property of other owners, denies the complainant the equal protection of the law and deprives the complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

And the complainant further shows that the proposed scheme of taxation is inequitable in that the complainant is charged with an undue proportion of the expenses of the State Government, and in

addition thereto, is charged with local taxation at the same rates as individual tax payers, who as heretofore seen pay no state taxes whatever.

Complainant also avers that if the so-called Franchise Tax is construed to be a tax for the privilege of doing business, it is unconstitutional and void as a tax upon the privilege of engaging in interstate commerce and violates the commerce clause of the Constitution of the United States.

11. The complainant avers that the tax imposed by said Section 82 (6½) is in all events illegal and void to the extent that it is levied upon the excessive and erroneous assessment made by the Commissioner of Revenue as aforesaid.

12. The complainant also avers that the tax imposed by said Section 82 (6½) has the effect of bringing about double taxation of the complainant's property in that its property is subject to the local rates of levy made by the counties, cities and towns and in addition thereto the said Section 82 (6½) imposes another tax upon the same value upon which the so-called franchise tax is levied, while the property of individuals is not subject to the tax levied under Section 82 (6½). The complainant avers that such a scheme of
29 taxation takes its property without due process of law and denies it the equal protection of the law which is in violation of the Fourteenth Amendment to the Constitution of the United States as well as Article 5 Section 3 of the Constitution of North Carolina.

13. Complainant avers that under the scheme of laws provided by the State of North Carolina, all taxpayers other than railroads and others assessed by the Revenue Commissioner have the right to appeal to and the duty of equalization is placed upon the State Board of Equalization consisting of three individuals. That prior to 1921 the railroad assessments were fixed by a board of three, known as the State Tax Commission, but under the law of 1921 the assessment is fixed by the Revenue Commissioner and the law does not provide, as was the legislative intention under the heretofore recognized policy of the State, for any appeal from this assessment fixed by the one individual. This is a denial of the equal protection of the law and of the uniformity clause of the North Carolina Constitution.

14. Complainant shows that it will owe to the counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment of its property for taxes in the State of North Carolina, and inasmuch as it has no desire to embarrass the counties and municipalities in the collection of the revenue to which they may be entitled, it expresses a willingness, if any plan may be devised under which it may legally do so, to pay the taxes based upon a certainly legal assessment of its property.

15. Complainant avers that the so-called Franchise Tax became due October 15th, 1921, and under Section 4 of the Revenue Act it

may be made a lien upon the complainant's property in North Carolina and a cloud upon the title thereto. The complainant has no remedy provided by the North Carolina Statutes to contest the validity of a tax payable direct to the State Treasurer, as is the said tax involved in this suit, other than a suit for injunction. The complainant therefore has no adequate remedy at law and consequently brings this suit.

30 Complainant further avers the assessment herein complained of was on September 2, 1921, certified to the State Auditor, and to the several counties and municipalities in the State of North Carolina in which complainant's lines are subject to tax. Complainant has, therefore, joined as parties defendant hereto the State Auditor and the State Treasurer, who, under the law, respectively charge for collection and receive payment of the franchise tax, and the Sheriff of each county in which complainant has property, upon whom the law places the duty of collecting the county taxes levied upon said illegal assessment, and the City or Town Tax Collector of each incorporated city or town in which complainant has property, upon each of whom the law imposes the duty of collecting the city or town taxes on said illegal assessment, and unless said officers are joined in this suit, complainant will be required to institute a number of suits, all of which will involve the same and the one question of the validity of such assessment made by the Commissioner of Revenue. The assessment is made as an entirety by the Revenue Commissioner and by him apportioned to the several counties and municipalities of the State. The boards of County Commissioners and the Chairman of the County Commissioners and the Mayor of each incorporated city or town do not make the assessment and are not empowered to change the same. They are required by law to assess against the complainant on the proportion of said invalid assessment so certified to it or him the tax imposed for county, township, city, or other tax district purposes and levied on other property.

Unless the tax collecting officers of the several counties and municipalities are restrained, they will proceed under the law to collect the tax on the illegal assessment, which tax became due on the first Monday in October. Under the law of North Carolina, the taxes so assessed in behalf of the State, counties, towns and cities, if not paid, will under the Statutes of North Carolina become a first lien upon the property of the complainant in North Carolina and will be a cloud upon the title to said property, and if said taxes are not paid as assessed, the penalties as provided by law will attach and its

31 property will be sold for the taxes, all to the great damage of complainant for which it has no adequate remedy at law.

Prayer.

Wherefore, and for as much as complainant is remediless in the premises, according to the common law, and remediable only in equity, and that complainant may not suffer irreparable injury and damage, and may be permitted to pursue and carry on its business

without unlawful hindrance and destruction, and that the railroads by complainant operated in the State of North Carolina as aforesaid and its other property herein may not be subjected to illegal liens and clouds, complainant prays for a writ of subpœna to issue against the defendants and each and every one of them named and described as aforesaid, to appear and full and true answer make to this bill of complaint, but not under oath, answer under oath being waived, and that said defendants, and each and every one of them, be enjoined by final decree, and, meanwhile, by a preliminary injunction as follows, to wit:

That said Augustus D. Watts, Commissioner of Revenue of North Carolina, be enjoined and restrained from taking, or causing to be taken, any action towards enforcing the tax, or any part thereof, which the said Section 82 (6½) of the said Revenue Act imposes upon the complainant or its property in the state of North Carolina, and that he be enjoined and commanded to cancel the assessment made by him against the complainant with respect to the tax imposed by the said Section 82 (6½) of the said Revenue Act.

That Baxter Durham, as Auditor of North Carolina, be enjoined and restrained from charging to complainant for collection and that Benjamin R. Lacy, as State Treasurer, be enjoined and restrained from collecting from complainant the tax or any part thereof imposed by said Section 82 (6½) of the said Revenue Act.

That James S. Manning, as Attorney General of North
32 Carolina, be enjoined and restrained from instituting or authorizing the institution of any suit or proceedings to collect the said tax.

That each of the defendant Sheriffs aforesaid of the respective counties be enjoined and restrained from collecting or taking any steps to collect from complainant upon the proportion of said assessment apportioned to and certified by the Commissioner of Revenue as being apportioned to his County, any and all taxes levied thereon for County, Township or other taxing district purposes, until the final order of this Court.

That each of the defendant city or incorporated town tax collectors of the respective cities and towns aforesaid, be enjoined and restrained from collecting or taking any steps to collect from complainant upon the proportion of the said assessment apportioned to and certified down by the Commissioner of Revenue to the respective Mayors of said cities and towns as being apportioned to his said city and town any and all taxes levied thereon for the city, town or other municipality purpose until the final order of this Court.

That each of the defendants above named, tax collectors for special taxes, be restrained and enjoined from collecting or taking any steps to collect from the complainant upon the proportion of the said assessment apportioned to their respecive special tax districts, any taxes levied thereon for said tax districts or for any purposes therein, until the final order of this Court.

Complainant further prays that the tax statutes of North Carolina herein alleged to be unlawful be decreed by this Court to be uncon-

stitutional and invalid, and that no assessment for taxation be made against the complainant thereunder, and no tax be levied against or collected from the complainant thereunder; and for all such
33 other, further, general, and special relief to which in equity it may be entitled.

This is the first application for injunction in this cause.

MURRAY ALLEN,
Solicitor for Complainant.

FORNEY JOHNSTON,
JAMES F. WRIGHT,
Of Counsel.

STATE OF GEORGIA,
City of Atlanta:

W. L. Stanley, being duly sworn, deposes and says that he is General Attorney of the Seaboard Air Line Railway Company, the above named complainant, which is a corporation, that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

W. L. STANLEY.

Subscribed and sworn to before me this 28th day of November, 1921.

[Seal of Notary Public.] E. L. CHAPPELL,
Notary Public.

34 *Service of Bill of Complaint.*

Filed Dec. 1, 1921.

Received at Raleigh last night, November 30th.

Executed at Raleigh, December 1st by delivering copies of this complaint with Hon. Cameron Morrison, Governor of North Carolina, James S. Manning, Attorney General of North Carolina, Baxter Durham, State Auditor of North Carolina, B. R. Lacy, State Treasurer of North Carolina, Augustus D. Watts, Commissioner of Revenue of North Carolina, as within I am commanded.

GEO. H. BELLAMY,
U. S. Marshal,
By —— ——,
Deputy Marshal.

I certify that the within is entered and filed this day.
Dec. 1, 1921.

S. A. ASHE,
Clerk.

35 *Stipulation as to Service.*

Filed Nov. 29, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Commissioner of Revenue of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; Baxter Durham, State Auditor of North Carolina; James S. Manning, Attorney General of North Carolina, et al., Defendants.

Stipulation.

In this cause, it is agreed that a copy of this bill and order to show cause why preliminary injunction should not be issued shall be served upon the defendants, other than the State Officials, by the Clerk of the United States District Court mailing to each of the defendants named a copy of the bill and order to show cause. As to the State Officials a copy of the bill and order to show cause shall be served by the Marshal in the usual way.

The writ of subpœna shall be served in the same manner as the bill and order to show cause, that is, by the Marshal upon the State Officials named in the bill and by the Clerk of the United States District Court mailing to each of the defendants named a copy of the subpœna, all the papers named to be sent by registered mail. And it is stipulated that this service shall be the same in legal effect as if made by the Marshal.

JAMES S. MANNING,
Attorney General.
SEABOARD AIR LINE RAILWAY COMPANY,
By MURRAY ALLEN,
District Counsel.

Agreed to:

GEO. H. BROWN,
Of Counsel.

This 29 day of November, 1921.

3C *Subpœna and Marshal's Return on Same.*

Filed Dec. 1, 1921.

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

District Court, Fourth Circuit, at Raleigh.

The United States of America to Hon. Cameron Morrison, Governor of North Carolina; James S. Manning, Attorney General of North Carolina; Baxter Durham, State Auditor of North Carolina; B. R. Lacy, State Treasurer of North Carolina; Augustus D. Watts, Commissioner of Revenue of North Carolina, Greeting:

We command you, that you appear before the Judges of our District Court of the United States of America, for the Eastern District of North Carolina, at the office of the Clerk of said Court, in the City of Raleigh, in said District, on the 19th day of December, next, to answer the bill of complaint of Seaboard Air Line Railway Company, filed in the Clerk's office of said Court, in said City of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of Judgment being pronounced against you by default.

To the Marshall of the Eastern District of North Carolina to Execute.

Witness, the Hon. William Howard Taft, Chief Justice of the Supreme Court of the United States, at Raleigh, in said District, the 29th day of November, 1921, and in the 145th year of the Independence of the United States.

Issued the 29th day of November, 1921.

(S.) S. A. ASHE,
Clerk,

(S.) By S. A. ASHE, JR.,
Deputy Clerk U. S. District Court.

The within-named defendants are notified that unless they enter their appearance in the Clerk's office of said District Court at Raleigh and file their answer, or other defense, on or before the 20th day after service hereof, excluding the day of service, the bill filed herein will be taken as confessed and a decree entered accordingly.

(S.) S. A. ASHE,
Clerk,
By S. A. ASHE, JR.,
Deputy Clerk U. S. District Court.

Received at Raleigh, last night, November 30th, 1921.

Executed at Raleigh, December 1st, 1921, by reading the within subpœna and leaving copy with Hon. Cameron Morrison, Governor

of North Carolina, James S. Manning, Attorney General of North Carolina, Baxter Durham, State Auditor of North Carolina, B. R. Lacy, State Treasurer of North Carolina, Augustus D. Watts, Commissioner of Revenue of North Carolina, as within I am commanded.

GEO. H. BELLAMY,
U. S. Marshal,
By T. W. BARTHOLOMEW,
Deputy Marshal.

37 *Clerk's Certificate as to Service.*

Filed Dec. 1, 1921.

I, S. A. Ashe, Clerk, certify that in accordance with stipulation filed in this case, I have completed service by sending by Registered mail to each of the defendants herein the copy of the Bill of Complaint, Order to Show Cause and Equity Subpœna.

Expenses $6.20.

S. A. ASHE,
Cerk U. S. District Court.

I certify that the within is entered and filed this day.
Dec 1, 1921.
S. A. ASHE,
Clerk.

38 *Application for Interlocutory Injunction.*

Filed Nov. 29, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, et al.

Comes the above named plaintiff and shows the Court:

That it has instituted in this Court by bill of complaint an action against A. D. Watts, as Commissioner of Revenue of the State of North Carolina, and other defendants as shown in said bill which is now referred to and made a part of this application, the object and purpose of the action being to secure from this Honorable Court an order enjoining preliminarily and perpetually the defendants, who are tax assessing, collecting, and enforcing officers of the State of North Carolina and its municipal subdivisions, from collecting or

instituting proceedings to collect State, County, Municipal, or other taxes leved upon or based upon an illegal overassessment of plaintiff's property, made and certified to them by the Revenue Commissioner of North Carolina, which assessment is contrary to the Constitution and laws of North Carolina and the Constitution of the United States. The bill alleges and sets forth the grounds of unconstitutionality of the assessment and of the statutes of North Carolina under which said invalid assessment was made and under which the illegal taxes will be collected by the defendants named in said bill unless restrained by this Honorable Court, all of which is more fully alleged, set out, and explained in the bill of complaint filed herein.

39 Plaintiff alleges that the franchise tax levied under Section 82 of the Revenue Act of North Carolina, ratified March 8, 1921, is unconstitutional and that no tax can be levied thereon under any assessment, and the action of the State's tax collecting officer in the execution of said void statute is sought to be enjoined. Said tax is due and payable on or before the 22nd day of October, 1921, and if not paid by December 1, 1921, a penalty of ten per cent (10%) is added to such tax, and other pains and penalties are inflicted.

The ad valorem taxes levied by the counties, towns and local taxing districts, upon said illegal assessment is now due and payable, and unless paid, the Sheriff may levy and sell property of this plaintiff after November 1, 1921, and other pains and penalties will be inflicted.

The municipal and other taxes levied upon said illegal assessment will become due and the collection thereof will be undertaken prior to the determination of this cause unless the tax collecting officers are restrained.

Wherefore, application is made under Section 266 of the Judicial Code for an interlocutory injunction as prayed for in said bill, and this Court is petitioned to call to his assistance to hear and determine this application two other judges, and that the statutory notice of the hearing of this application be given the Governor and the Attorney General of the State of North Carolina and each of the defendants to the said bill, and an order issued requiring the defendants to show cause at the time and place to be fixed by this Court according to law why said interlocutory injunction should not issue as prayed for.

This application is based upon the verified bill of complaint on file herein.

MURRAY ALLEN,
Attorney for Plaintiff.

40 *Notice of Hearing of Application for Interlocutory Injunction under Judicial Code, Section 266.*

Filed Nov. 29, 1921.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, et al.

To Honorable Cameron Morrison, Governor of the State of North Carolina; Honorable James S. Manning, Attorney General of North Carolina; Honorable A. D. Watts, Revenue Commissioner of the State of North Carolina; Honorable Baxter Durham, Auditor of the State of North Carolina; Honorable Banjamin R. Lacy, Treasurer of the State of North Carolina, and to each of the defendants named in the above bill:

You, and each of you, are hereby notified that the Seaboard Air Line Railway Company, plaintiff, has filed its verified bill of complaint in the District Court of the United States for the Eastern District of North Carolina against A. D. Watts, Revenue Commissioner, et al., praying an injunction against the named tax assessing, collecting and enforcing officers of the State of North Carolina and its municipal subdivisions from collecting or instituting proceedings to collect State, county, municipal, or other taxes levied upon or based upon the alleged illegal overassessment of plaintiff's property for the year 1921, made and certified to by the Revenue Commissioner of the State of North Carolina, and also praying that said tax laws of North Carolina be declared unconstitutional, as will appear from the bill filed herein.

In this cause plaintiff has made application for an interlocutory injunction under Section 266 of the Judicial Code of the United States.

41 The application for such interlocutory injunction will be heard in the United States District Court, in the City of Raleigh, North Carolina, on the 12th day of December, 1921, at 10 o'clock A. M., and you, and each of you, are notified to appear at said time and place and show cause, if any, why the interlocutory injunction prayed for should not be granted.

Done in open court this 29 day of November, 1921.

H. G. CONNOR,
Judge.

42 *Service of Notice of Hearing.*

Filed Dec. 1, 1921.

Received at Raleigh, last night, November 30th, 1921.
Executed at Raleigh, December 1st, 1921, by reading the within subpœna and leaving copy with Hon. Cameron Morrison, Governor of North Carolina; James S. Manning, Attorney General of North Carolina, Baxter Durham, State Auditor of North Carolina; B. R. Lacy, State Treasurer of North Carolina; Augustus D. Watts, Commissioner of Revenue of North Carolina, as within I am commanded.

GEO. H. BELLAMY,
U. S. Marshal,
By T. W. BARTHOLOMEW,
Deputy Marshal.

43 *Order for District Judge on Application for Interlocutory Injunction.*

Filed Nov. 29, 1921.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMANY

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, et al

The application for an interlocutory injunction was presented to me this 29th day of November, 1921; and having read and considered the verified bill filed in this cause, and the application for a hearing for interlocutory injunction under Section 266 of the Judicial Code, and being advised that for the reasons set forth in said application and upon the grounds stated therein and in the verified bill, plaintiff is entitled to have its application heard under Section 266 of the Judicial Code:

It is ordered that the application be filed and a hearing of the application for an interlocutory injunction be had and proceeded with in accordance with Section 266 of the Judicial Code as amended by Act of Congress approved March 14, 1913, and such hearing is set down for the 12th day of December, 1921, at the United States Court rooms in the city of Raleigh, North Carolina, at 10 o'clock A. M.

It is further ordered that notice of said hearing, not less than five days, shall be given to the Governor and the Attorney General of the State of North Carolina, and to each of the defendants to this suit. And I hereby call to my assistance at said hearing of said

application the Honorable Edmund Waddill, Jr., Circuit Judge of this Circuit, and the Honorable James E. Boyd, District Judge of the Western District of North Carolina.

This Nov. 29, 1921, at Raleigh, North Carolina.

H. G. CONNOR,
District Judge.

44 *Stipulation of Counsel & Interlocutory Order.*

Filed Nov. 30, 1921.

In the District Court of the United States, for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Commissioner of Revenue of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; Baxter Durham, State Auditor of North Carolina; James S. Manning, Attorney General of North Carolina, et al., Defendants.

Stipulation.

The following stipulation is entered into between counsel for plaintiff and the Attorney General of North Carolina and his associates as counsel for all defendants, for each of which defendants they have entered an appearance:

It is agreed that in order that the defendants may have sufficient time in which to prepare the defense, the application for an interlocutory injunction under Section 266 of the Judicial Code is, with the consent of the Court, continued until such date as the Court may select following January 1st, 1922.

The foregoing continuance being agreed upon and it appearing that before the hearing and determination of the application certain taxes will come due to the State of North Carolina, and to the counties, cities, towns and other taxing districts; therefore, it is agreed by the Attorney General of North Carolina and his associates as representing all of the defendants, that if the Seaboard Air Line Railway pays the taxes it agrees hereinafter to pay, then no further or other taxes sought to be enjoined in the bill will be demanded or collected or any action or suit of any character begun to collect or any penalty assessed for the nonpayment thereof until the further order of the Court.

45 The Seaboard Air Line Railway Company agrees that it will pay when due in accordance with the laws of the State of North Carolina to all counties, cities or towns, special school districts, or other special taxing districts all taxes that may be due each county, city, special school or other special taxing district of the State, on its proper proportionate share of an aggregate ad valorem assessment against plaintiff of $27,119,384.00.

The Attorney General of North Carolina agrees that he will take all necessary action to have the Commissioner of Revenue certify to the several counties and taxing districts of North Carolina their proper proportion of assessment of $27,119,384.00 as soon after the date hereof as may be practicable and, if possible, within such period as will enable the Railroad Company to take advantage of any discount that it may be entitled to under the law.

It is agreed between the parties that the Seaboard Air Line Railway Company is not to demand a receipt in full for its 1921 taxes in consideration of the payment it makes, but is to receive a receipt for the amount of the taxes paid, and the amount of taxes so paid shall be in full of said taxes due if an assessment shall be finally fixed at a sum not in excess of $27,119,384.00, or such payment shall be a credit upon all taxes that may be due if the assessment of plaintiff's property for ad valorem tax purposes for the year 1921 shall be finally fixed in excess of said $27,119,384.00, provided that such payment shall be without prejudice to any rights of the Seaboard Air Line Railway Company growing out of any illegality in the tax rates of the individual counties, cities, towns and special school and taxing districts to which payment is made under this stipulation.

It is further agreed that if defendants desire to file an answer prior to the hearing of the application for an interlocutory injunction they shall file such answer or any motion or other pleading they desire to file by January 1st, 1922, and furnish opposing counsel with copies thereof.

46 Plaintiff shall have until January 8th, 1922, to file any motion or reply pleading and any affidavits in support of bill or motion for interlocutory injunction or in reply and furnish opposing counsel with copies thereof.

Defendants shall have until January 10, 1922, to file affidavits in support of their answer or in reply and plaintiff shall have until hearing to file reply affidavits.

This stipulation to become effective and filed in this Court upon approval hereof by the Court.

This 30th day of November, 1921.

(S.) MURRAY ALLEN,
Attorney for Plaintiff.

(S.) JAMES S. MANNING,
Attorney General of North Carolina.

(S.) GEO. H. BROWN,
Of Counsel for Defendants.

Approved November 30th, 1921.

(S.) EDMUND WADDILL, JR.,
U. S. Circuit Judge.
(S.) JAS. E. BOYD,
(S.) H. G. CONNOR,
U. S. District Judges.

47 *Motion to Dismiss.*

Filed December 7, 1921.

In the District Court of the United States, Western District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue, et als., Defendants.

Motion.

Come now the defendants, A. D. Watts and others named as defendants in the complaint in this suit, and move the court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss this suit because it is conceded in the complaint that the plaintiff owes and is liable to pay to the defendants taxes on property situated within the State of North Carolina and in the several counties named in the complaint and in the several cities, towns and taxing districts named in the complaint, of the value of $27,119,384.00, on which the plaintiff, as it appears in its complaint, has not paid or tendered payment of the taxes due thereon.

(S.) JAMES S. MANNING,
Attorney General;
(S.) FRANK NASH,
Assistant Attorney General,
Solicitors for Defendant.

(S.) LOCKE CRAIG,
(S.) W. P. BYNUM,
(S.) S. S. ALDERMAN,
(S.) GEO. H. BROWN,
Of Counsel.

48 *Order Continuing Motion to Dismiss.*

Filed December 7, 1921.

No. 442.

SEABOARD AIR LINE RAILWAY CO.

vs.

A. D. WATTS, Com. of Revenue, et al.

Order Continuing Motion to Dismiss.

This cause coming on to be heard in Raleigh on this 7th day of December, 1921, by consent, upon the application of complainant for an interlocutory injunction as prayed for in the bill and as set out in order to show cause, and the defendants having filed a motion to dismiss the bill, and it appearing that the complainant and defendants have entered into a stipulation, and the original of which is filed in this Court, it is, on motion of the complainant, by consent of the defendants, ordered, adjudged and decreed that the application and motion for the interlocutory injunction and the motion to dismiss the bill be continued to be heard in the Court room of the United States District Court at Greensboro in the Western District of North Carolina at such time as the similar actions brought in the Western District of North Carolina by the Southern Railway Company, the Atlantic & Yadkin Railroad Company and the Atlantic Coast Line Railroad vs. A. D. Watts, et al., shall be heard and pending said hearing the stipulation entered into by the complainant and defendants and approved by the Court shall be effective.

H. G. CONNOR,
United States District Judge.

Seen and approved:

MURRAY ALLEN,
Counsel for Complainant.
JAMES S. MANNING,
Attorney General;
GEO. H. BROWN,
Counsel for Defendants.

Answer.

Filed Dec. 21, 1921.

49 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

442.

SEABOARD AIR LINE RAILWAY CO.

vs.

A. D. WATTS. Commissioner of Revenue, and Others.

Answer.

Come now A. D. Watts and the other defendants in the above entitled suit and, answering the complaint filed by the plaintiff therein, say:

1. The allegations of article one are admitted. The defendants aver, however, that the plaintiff is operating its said lines of railroad in North Carolina not only in interstate commerce, but also in a very extensive business of intrastate commerce, carried on wholly within the limits of the State of North Carolina.

2. The allegations of article two are admitted, except as to the name of the defendant Watts, and except that it is denied that the defendants Watts, Lacy, Durham, and Manning are charged with the duty of levying or assessing taxes against the plaintiff, except that beginning with the year 1924 it will be the duty of the defendant Watts, Commissioner of Revenue, to assess the property of the plaintiff and other railroads in the State quadrennially for taxation.

3. The allegations of article three are denied, except that it is admitted that this is a suit in equity; that the amount in controversy, exclusive of interest and costs, exceeds the sum and value of $3,000; and that the plaintiff in this suit seeks to have the
50 defendants restrained from collecting certain taxes under the statutes of North Carolina.

4. The allegations of article four are admitted.

5. It is admitted that the various sections and parts of statutes set forth in article five are correctly quoted. The allegations of article five are admitted, except as hereinafter qualified or denied.

Section 64 of the Machinery Act of 1921, referred to on page 9 of the complaint, did not make it the duty of the Commissioner of

Revenue to do the things therein stated, but made it the duty of the State Tax Commission. Subsequently there was enacted a separate statute, ratified March 8, 1921, being Public Laws, Session 1921, page 388, whereby the powers and duties of the State Tax Commission were transferred to and imposed upon a newly created officer to be called the Commissioner of Revenue. That statute, however, and the said Section 64 of the Machinery Act of 1921, of which it was amendatory, did not require the Commissioner of Revenue to assess the properties of railroads for taxation for the year 1921 or for any year thereafter until 1924. The State Tax Commission had made the assessments of railroad properties in North Carolina, including the plaintiff's, for taxation for 1920, and the said assessments had been approved by the General Assembly of North Carolina in its Extra Session of 1920, Public Laws 1920, Chapter 1, and adopted as the basis for taxation for the years 1920 to 1923, inclusive. Such property is assessed in North Carolina only quadrennially. The only power with reference to assessment of railroad properties prior to 1924 given to the Commissioner of Revenue by the Public Laws of 1921 was the power to review the State Tax Commission's assessment of railroad properties, given by the Machinery Act of 1921, Section 28 (*g*).

The said Section 65 of the Machinery Act of 1921, referred to, and the proviso thereof quoted, on page 10 of the complaint, is the statute particularly controlling the assessment for taxation
51 of the properties of railroads doing interstate commerce, operating both within and without the State of North Carolina.

Section 82 (6½) of the Revenue Act of 1921, referred to and quoted on pages 10 and 11 of the complaint, was first enacted by the General Assembly in the Extra Session of 1920, Public Laws 1920, Chapter 1, Section 7 (*d*), and was carried forward without change in the said Revenue Act of 1921. The said Section 82 (6½) was a substitute for Sections 77 and 78 of the Revenue Act of 1919, which imposed a privilege tax on railroads for the privilege of doing intrastate commerce within North Carolina, based on gross earnings per mile within the State. This tax levied by the said Sections 77 and 78 of the Revenue Act of 1919 had existed in the laws of North Carolina for many years, in addition to ad valorem taxation. The said Section 82 (6½) substituted for the old privilege tax based on gross earnings per mile a new form of privilege or franchise tax upon all railroads for the privilege of doing intrastate business within North Carolina, based on the total properties of each said railroad within the State as assessed under the Machinery Act for ad valorem property taxation.

Section 3 of the said Revenue Act, it is admitted, provides that no tax on any property in the State shall be levied for any of the uses of the State Government; and no tax on property is levied by any of the statutes of North Carolina for any of the uses of the State Government.

6. Answering the allegations of article six, the defendants admit that the ad valorem assessment of the plaintiff's properties in the State of North Carolina was $20,191,720, including both the strictly railroad properties apportionable to counties and the local properties lying off the right of way and locally assessed. It is admitted that in 1920 the State Tax Commission, under the Revaluation Act, increased the said assessment to $34,768,440, and that the plaintiff paid its taxes thereon to the State Treasurer under written protest, but it is denied that any just ground or reason for such protest existed. It is denied that the defendant Commissioner of Revenue made an assessment of the plaintiff's property for 1921, or
52 that he had any authority to make any such assessment under the laws of North Carolina prior to the year 1924. The 1920 assessment made by the State Tax Commission included the following items: apportionable railroad property assessed by the Commission, $34,081,500; property lying off the right of way and assessed by local assessors and reported by them to the State Tax Commission, $686,940. The total of these two items gave the amount of $34,768,440, above referred to. What the Commissioner of Revenue did for 1921 was to bring forward without change the 1920 assessment of apportionable railroad property of $34,081,500 and to add thereto the valuations of property off the right of way and locally assessed according to reports made to him by both the plaintiff and the local assessors. The reports of the local assessors and of the plaintiff were conflicting and confused, and the Commissioner of Revenue never has known, and does not now know, what the correct total value for 1921 of such property of the plaintiff locally assessed is. From the conflicting reports made to him he ascertained a tentative figure of $753,185, which, added to the said assessment of apportionable railroad property as carried over from 1920 of $34,081,500, gave the total of $34,834,685 referred to in article six of the complaint. It is denied that at the hearing had before the Commissioner of Revenue facts were adduced showing that the said valuation of $34,081,500 as carried over from 1920 for plaintiff's apportionable railroad property was in excess of the true "actual value" of the said property as the said term is defined in Section 28 (*e*) of the Machinery Act. Some showing was made by the plaintiff as to alleged incorrectness of the figure of $753,185 for property locally assessed, but no demonstration of what the correct amount for the said property should be was made, and accordingly the Commissioner of Revenue refused to make any reduction, either in the apportionable railroad property valuation or in the valuation of property locally assessed.

Upon the petition of the plaintiff for a further review by the State Board of Equalization, the Commissioner of Revenue, sit-
53 ting with the said board and as a member thereof, granted the application for the hearing, and after due consideration of the documents and the arguments and statements made, was of the opinion that the valuation of the plaintiff's apportionable railroad property theretofore made by the State Tax Commission, of $34,081,500, was correct for the year 1921 as well as for 1920, and

was fair and just; was further of the opinion that no showing as to the correct total valuation of its locally assessed property had been made by the plaintiff, and, with the advice and approval of the other members of the board, declined to change or reduce either of the same further.

It is admitted, however, that on or about November 21, 1921, the Commissioner of Revenue, convinced that, due to local reductions, the valuation of property of the plaintiff locally assessed for 1921 would not exceed that for 1920, or the sum of $686,940, tentatively reduced the said valuation from $753,185 to $686,940, pending further and more correct reports, which said reduction had the effect of reducing the total valuation of the sum of apportionable railroad property and of property locally assessed from $34,834,685 to $34,768,440.

It is denied that in making the allocations to the counties, cities, and towns, pursuant to Section 64 of the Machinery Act, the Commissioner used the value of $34,834,685. On the other hand, he apportioned to counties, cities, and towns only the valuation of the plaintiff's apportionable railroad property, to-wit, the sum of $34,081,500, first deducting the valuation of the property locally assessed. It is denied that the apportioning of the said value is erroneous or that it results in the apportionment to the counties and other local subdivisions of $66,245, or of any other amount, of value to which they are not entitled. The defendants aver that the only confusion or incorrectness in the valuation of plaintiff's property for taxation is that which arises from confusion in the returns of plaintiff and of local assessors as to property locally assessed, and that whether the correct valuation of the said property for 1921 is $753,185
54 as at first ascertained, or is $686,940 as afterward tentatively revised, or a greater or less figure, still no part of such valuation was apportioned to counties, cities, and towns by the Commissioner of Revenue and whenever the correct figures for the plaintiff's property locally assessed are ascertained the figure of $686,940 will be either reduced or increased to accord with the correct figures, and the total of $34,081,500 plus whatever is the correct figure for such property locally assessed will be revised accordingly. It is denied that the amount of $34,081,500, the assessment of plaintiff's apportionable railroad property, is in any way excessive or erroneous.

Prior to the commencement of this suit, the Commissioner of Revenue fully informed the plaintiff of his intention to allow on property locally assessed all reductions made in the respective counties under the Act of 1921, and that upon the ascertainment of the correct figures for assessments of plaintiff's property locally assessed he will certify to the State Auditor the necessary corrections in the valuation heretofore certified to him as the total ad valorem valuation of plaintiff's property, the basis for the calculation of the franchise or privilege tax.

7. It is admitted that the parts of statutes set out in article seven are correctly quoted, but it is denied that they or anything in the said article constitute any reason why the plaintiff's apportionable

railroad properties should not have been assessed at $34,081,500 as hereinbefore alleged. And the defendants aver that the said assessment is correct for 1921 as well as for 1920. As to the total of the said property plus the property of the plaintiff locally assessed, which total stands now tentatively at $34,768,440, the same is subject to revision to the extent of proper revisions in the said value of $686,940 therein contained, which will be made upon the ascertainment of the correct valuations of such property locally assessed.

It is admitted that the reductions set out and referred to on pages 20, 21 and 22 of the complaint were made by the respective county boards of review and by the said revaluations in Robeson and 55 Scotland Counties, were not revised or changed by the State Board of Equalization, and therefore became effective.

It is denied, however, that the Commissioner of Revenue declined to give the plaintiff the benefit of such reductions upon its real property as were allowed to other persons and corporations in every case in which the facts were correctly reported to him. The defendants aver that although such reductions were not applied to the right of way, lands and structures thereon, that is, to strictly railroad property assessed by the State Tax Commission and apportionable to the counties, they were, or were intended to be, applied to the property of the plaintff lying off the right of way and locally assessed, and not strictly railroad property, exactly as they were applied to other real estate. The Commissioner of Revenue has no means of knowing the local assessments of such property off the right of way, and the proper reductions thereon, except as the same are reported to him by the local assessors and by the plaintiff, as aforesaid. And the said reports have been confused and conflicting. Upon the facts being shown, the Commissioner of Revenue will allow upon the assessments of such property locally assessed the same reduction in each county as was made on other real estate in general in the respective county.

It is denied that facts were produced before the Commissioner of Revenue showing that the assessment against the plaintiff was unfair, discriminatory, would be taking the property of the plaintiff without due process of law, would be denying to it the equal protection of the law, was not uniform, was not in accordance with the said Chapter 38, Public Laws of 1921, or should be reduced in order to equalize the value of the plaintiff's property with that of other persons or corporations, or for any other reason. It is denied that the said assessment, or any act of the Commissioner of Revenue or of the State Tax Commission was unfair toward or discriminatory against the plaintiff, or was violative of any statute of North Carolina or any provision of the Constitution of the United States or the Constitution of North Carolina.

56 It is admitted that, as alleged in the complaint on pages 22-23, the property of the plaintiff was assessed in 1920 at its true value within the meaning of the tax statutes of North Carolina. It is denied, however, that the plaintiff's property in North Carolina should be assessed for taxation for 1921 at any lower valuation than

it was for 1920, except as to such correction as should be and will be made in property locally assessed as hereinbefore stated. It is denied that the conditions which brought about the reduction in the value of real estate in general in the counties wherein reductions in assessment thereon were made applied to plaintiff's apportionable railroad property. It is admitted that the deflation in property values was not confined to real estate of individuals but affected other real estate similarly situated, but it is denied that any such deflation affected or applied to the plaintiff's railroad property. As to the real estate of the plaintiff lying off the right of way, not strictly railroad property, and which was assessed by local assessors, the same conditions in general controlled as those which controlled the values of real estate in general, and the same reductions were or will be allowed the plaintiff on such property as were allowed to other real estate. It is admitted that the reductions or revaluations were not based upon the reduced value of any particular parcel of real estate, but were based upon general conditions applicable to real estate in general as such, but it is denied that those conditions applied to railroads and railroad property, that is property, real or personal, located on rights — way and devoted to the service of transporation. It is denied that the average reduction made in 1921 assessment of real property generally under the 1920 assessment by the counties traversed by its line is 22 per cent, and it is denied that plaintiff's 1921 assessment should have been reduced by that proportion under its 1920 assessment, or that any reduction should have been made under its 1920 assessment. As hereinbefore alleged the same reduction which was applied to real estate in general was or will be allowed the plaintiff on all of its real estate assessed by local assessors as real estate, and it is denied that the failure and refusal of the Commissioner of Revenue to grant the plaintiff a reduction in the
57 assessment of its apportionable railroad properties assessed as such, and not as real estate, by the State Tax Commission, corresponding with reductions allowed by counties on assessments of real estate as such, the same treatment being accorded to all railroads in the State in this respect, in any way constituted or resulted in discrimination against the plaintiff, and in any way contravenes Section 3 of Article V of the Constitution of North Carolina or denies the plaintiff the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States.

Further answering article seven, the defendants aver that the Revaluation Act, Public Laws, 1919, Ch. 84, was passed by the General Assembly of North Carolina for the purpose of making the tax laws of the State accord with Section 3 of Article V of the Constitution of North Carolina by making the ascertainment of the true value in money of all property in the State the basis of assessment for taxation. This law provided for a complete revaluation of all property, real, personal, and mixed, by local appraisers in the county, and of railroad properties by the State Tax Commission, this new valuation to be used as the basis for computing the ad valorem taxes for

the years 1920 to 1923 inclusive, when the same should be approved and the tax rates for the State revised by the General Assembly, and when the tax rates levied by counties, cities, towns, and special tax districts should be revised under rules to be laid down by the General Assembly.

The general revaluation of all property in the State was made pursuant to this act. Real estate in general in the State was raised about two hundred per cent, or tripled, in value above the assessments for 1919. Railroad properties in the State were raised by the State Tax Commission under the provisions of the said Revaluation Act only about one hundred per cent above the 1919 assessments. The assessment of the properties of the plaintiff in this State was raised under the said act only from $20,191,720 to $34,768,440, as alleged in the complaint, which is an increase over the 1919 assessment of only about 71 per cent, as against the
58 general increase in assessment of real estate in the State of 200 per cent. The said assessments made under the Revaluation Act were thereupon approved and adopted by the General Assembly at the Extra Session of 1920 (August), by Chapter 1 of the Public Laws of 1920, called the Revenue Act of 1920. By this statute the General Assembly adopted the revaluation assessment as the basis for the levy of taxes for the years 1920 to 1923 inclusive. This act, furthermore, revised the tax rates of the State and authorized and made the rules for the revision of tax rates by counties, cities, towns, and special tax districts, which revisions were actually made.

The defendants aver that the revaluation had been made at a time when farm products, farm land, and real estate in general were bringing in the market abnormally high prices which at the time were thought to be stable. A sharp period of depression, affecting particularly the values of such real estate and products, followed almost immediately after the said reassessment under the Revaluation Act and much real property fell in market value below the value at which it had been assessed under the revaluation. It is denied, however, that the 1920 assessment of railroad properties in the State under the Revaluation Act was made at a time when such property was abnormally high, as other property was, and it is denied that any such depression in the market values of railroad system properties followed the said revaluation.

As a result of the condition above described as applied to farm lands and other real estate in general, there was enacted in the Machinery Act of 1921, Section 28 (*a*) thereof, as quoted in article seven of the complaint, which provided that county boards of commissioners and county boards of appraisers and review, appointed under the Revaluation Act, should sit together jointly as county boards of review to determine if the valuation of real estate in the counties as a whole, as made under the Revaluation Act, was in excess of the fair value of such property at the time of meeting of the said boards of review. It provided that if it should be found that the assessments of real estate were thus excessive, the boards of

review should find the average percentage of excess for their
59 respective counties and report the same to the State Tax Commission. It provided that the valuation as assessed under the Revaluation Act and as reduced by this average percentage of reduction should be the value at which property should be assessed for taxation unless and until changed by the State Tax Commission.

The county boards of review in sixty-seven counties in the State, after due consideration, decided to make reductions and report the same to the State Board of Equalization, pursuant to these provisions. The assessments of value which had been made under the Revaluation Act were reduced by these percentages and the resulting assessments became the assessments for taxation of real estate in general in those counties. Plaintiff's properties lying off the right of way, and which were therefore assessed by local assessors as other real estate, and by them reported to the State Board of Equalization, were or will be reduced proportionately along with all other real property in those counties in which such property of the plaintiff was situated and such reductions made, and these reductions were or will be allowed.

Inasmuch as real property in general had been raised by the revaluation assessment to three times the former assessment, or an increase of 200 per cent, and the assessment of the plaintiff's property by the State Tax Commission for 1920 was an increase of only 71 per cent above the former assessment; and inasmuch, therefore, as the assessments of real estate in general for 1920 were in excess of their true market value in 1921, and the assessments of railroad properties, and particularly that of the plaintiff, for 1920 were not in excess of, but were at, their true value for 1921, the Commissioner of Revenue properly refused to make reductions of the said assessment of strictly railroad system property of the plaintiff to correspond with the cuts made by the county boards of review on real estate in general, including real estate of railroads, and of the plaintiff, lying off the right of way and locally assessed.

The defendants further aver that while the chief agricultural products of this State decreased in value in the latter part of
60 1920 and in 1921 more than 300 per cent, the freight rates of the plaintiff and other railroads were increased 25 per cent and their passenger rates were increased 20 per cent. The railroads continued to move the same volume of crops, and, although the market price of these crops had so fallen that the farmers and landowners suffered disastrous losses, and the values of land in general fell rapidly and sharply in the market, the railroads received higher compensation for moving the said crops and other subjects of commerce, and the values of railroad properties devoted to transportation suffered no such decline as did the values of real estate as such.

As hereinbefore stated, under the Revaluation Act the assessment of real estate in general in the State for 1920 was about three times that for 1919, or an increase of 200 per cent in round numbers, as showing which reference is hereby made to Exhibit "A" attached hereto. For the counties through which the plaintiff's lines run in

this State, those named in the table on pages 21 and 22 of the complaint, the assessments of real estate in general for 1920 were an increase of 289 per cent over those for 1919. After allowing the percentages of reduction alleged by the plaintiff, the assessments of real estate in general for 1921 in those counties were still an increase of 185 per cent over the 1919 assessments. The assessments of the plaintiff's railroad properties in this State for 1920, under the revaluation, was, as hereinbefore alleged, an increase of only 71 per cent over that for 1919, and the assessment of the said properties as carried forward by the Commissioner of Revenue for 1921 is an increase of only 71 per cent over that for 1919, as compared with the 1921 assessments of real estate in general in the counties through which plaintiff's line runs, which total an increase of 185 per cent over the assessments for 1919 even after allowing the percentages of reduction of which the plaintiff complains as being discriminatory against it. After allowing the said reductions, it still remains, therefore, that real estate in general stands at an increased valuation very much greater in comparison with the 1919 assessment
61 than the increased valuation on the plaintiff's property. It is impossible, therefore, that there can have been any discrimination against the plaintiff.

The following table is inserted as showing this. The table gives figures for those counties referred to on pages 21 and 22 of the complaint, being those through which the plaintiff's lines run. For each of these counties there is given the total assessment of real estate in general for 1919, the same for 1920 as increased under the revaluation, the percentage of reduction allowed on the 1920 assessment pursuant to the Act of 1921, and the resulting total assessment of real estate in general in the county for 1921. The totals show that real estate in general in these counties was subjected to an increase of 289 per cent in valuation for 1920 over that for 1919, and that even after allowing the 1921 reductions the assessment of such property for those counties for 1921 still remained an increase of 185 per cent over that for 1919.

County.	1919.	1920.	Percentage reduction.	1921.
Anson	$4,379,115	$13,379,115	20	$10,703,292
Bertie	4,055,859	13,958,780	25	10,469,086
Bladen	3,505,259	11,630,040	15	9,885,534
Chatham	4,082,437	11,813,037	25	8,859,778
Cleveland	7,574,843	28,158,726	15	23,934,917
Durham	14,777,121	43,426,807	25	32,570,135
Franklin	4,607,194	16,594,580	40	9,956,748
Gaston	11,302,506	52,344,289	25	39,258,217
Granville	4,324,641	16,088,145	33⅓	10,725,430
Halifax	8,675,643	35,636,872	40	21,382,123
Lee	2,735,378	8,706,469	33⅓	5,808,313
Lincoln	3,446,982	12,584,088	25	9,438,066
Mecklenburg	23,133,825	93,500,878	25	70,125,659
Northampton	4,463,235	12,367,534	33⅓	8,245,023
Rutherford	4,331,111	19,912,642	10	17,921,378
Union	5,092,979	21,444,971	25	16,083,728
Vance	4,550,421	17,856,566	33⅓	11,904,377
Warren	3,556,222	12,373,446	33⅓	8,248,964
Robeson	9,063,675	48,024,939	40	28,814,963
Scotland	3,661,138	21,319,716	1.1	21,085,199
Totals	$131,359,584	$511,121,682	....	$375,416,930
Seaboard Air Line Railway Co.	$20,191,720	$34,768,440	....	$34,768,440

62 The foregoing figures for the plaintiff, placed under the table for comparison, use the tentative sum of the apportionable property assessment of $34,081,500 and of the property locally assessed, it being understood that as to the property locally assessed the same is subject to revision in accordance with proper showing of fact, as hereinbefore alleged.

The defendants deny that the value of the plaintiff's railroad system properties in North Carolina depends upon or follows the fluctuating values of real estate in general as affected by temporary advances and declines. They aver that the causes which produced a rapid and abnormal inflation of values of real estate in general just before the revaluation in 1920 and which produced the sharp deflation of those values thereafter, did not apply to railroad system properties, and that such property of the plaintiff, assessable under the North Carolina tax laws by the State Tax Commission, and apportionable to counties and other subdivisions, has not fallen in value below its value in 1920. The plaintiff is not, therefore, entitled to any reduction in its total assessment for ad valorem taxation of $34,768,440, which the plaintiff itself alleges was the correct assessment for 1920, except as to such revision of the value of property locally assessed included therein as may be proper on account of changes in or reductions in the assessment of such property, and

such revision will be made during the course of this litigation upon a proper showing of fact requiring same. The failure to apply to the assessment of $34,081,500 of plaintiff's apportionable railroad property any such reduction as was made in the counties named, on real estate in general, including that of the plaintiff locally assessed, is no discrimination against the plaintiff, violates no part of the statutory law or of the Constitution of North Carolina, and violates no part of the Constitution of the United States.

8. Answering the allegations of article eight, the defendants deny that the Commissioner of Revenue assessed the plaintiff's property or that the said Machinery Act or any other act gave him any
63 authority to make an assessment at any time prior to 1924. As hereinbefore alleged the Commissioner of Revenue brought forward without change for 1921 the assessment of plaintiff's apportionable railroad property made by the State Tax Commission for 1920 of $34,081,500, and added to the figures reported to him as valuations of property of the plaintiff locally assessed. It was only in the value of such property locally assessed that a change was made by the Commissioner of Revenue. The defendants aver that under Sections 4 and 82 (6½) of the Revenue Act there will be levied against the plaintiff taxes in the amount of one-tenth of one per cent of the sum of the assessment of the plaintiff's apportionable railroad property, $34,081,500, plus whatever is found to be the correct total assessment for 1921 of its property locally assessed. It is denied that the Commissioner of Revenue has allocated or apportioned to counties, cities, and towns the valuation of $34,834,685, or any other valuation than that of the plaintiff's apportionable property, to-wit, $34,081,500, as hereinbefore alleged. It is denied that the various counties, cities, towns, and other taxing subdivisions of North Carolina will, unless restrained from doing so, attempt to collect from the plaintiff taxes based upon their local rates of levy as applied to any erroneous or excessive valuation of the plaintiff's property. The amount apportioned was correct as hereinbefore alleged.

9. The allegations of article nine are denied. The defendants deny that the franchise tax imposed under authority of Section 82 (6½) of the said Revenue Act is a property tax or an ad valorem tax based on the value of the plaintiff's property in the State. It is averred that the said tax is an excise, franchise, or privilege tax imposed upon the privilege of doing a strictly intrastate business within the State of North Carolina; that the said excise, franchise, or privilege tax, being levied upon the plaintiff in addition to the ad valorem property tax levied by counties, cities, towns and special taxing districts, does not and cannot constitute double or unequal taxation and is violative neither of Section 3 of Article V of the Constitution of North Carolina nor of the Fourteenth
64 Amendment to the Constitution of the United States. It is denied that the said tax is not levied by a uniform rule and the defendants aver that it is uniformly imposed upon all subjects in the State comprised within the class upon which it is imposed,

and that such classification is reasonable, legal, and proper. It is denied that the said Section 82 (6½) imposes a tax upon the plaintiff's property without imposing a like tax upon the property of other owners, or that it is in any sense a property tax. The defendants aver that the said tax is imposed upon all railroads subject to the taxing power of North Carolina alike and upon all subjects falling within the class comprised within the statute imposing the tax. In addition the defendants aver that persons, individual and corporate, other than railroads, are subjected to similar taxes by other sections of Schedule C of the said Revenue Act, as, for instance, privilege tax on chair and sleeping cars imposed by Section 76, privilege tax on express companies imposed by Section 79, privilege tax on telegraph companies imposed by Section 80, privilege tax on telephone companies imposed by Section 81, franchise tax on corporations other than railroads imposed by Section 82, subsections other than (6½), and various other privilege and license taxes imposed upon individuals as well as corporations, all of which are in addition to property taxation. The said tax is not a property tax, however, but is a true franchise or privilege tax. It is denied that the uniformity rule is violated by the fact that as to all other corporations it is measured by the capital stock, while as to railroads it is based upon the ad valorem value of property for taxation. It is alleged that the placing of railroad companies in one class and of other corporations in another class, and the imposition of a franchise or privilege tax meassured by a percentage of the value of the total properties in the State on corporations of the first class, and the imposition of such a tax based on capital stock upon corporations of the second class, is a reasonable, legitimate, and perfectly justifiable classification,
65 and in no way violates the rule of uniformity prescribed by Section 3 of Article V of the Constitution of North Carolina, or the Fourteenth Amendment to the Constitution of the United States.

10. Answering the allegations of article ten, the defendants deny that Section 82 (6½) of the Revenue Act is unconstitutional and void and deny that it is violative of the scheme of taxation which the North Carolina Constitution contemplates. It is denied that under the said Revenue Act, or any sections thereof, the State derives its entire revenue from corporations. On the other hand that act, which imposes all the taxes from which are produced the revenue for the State Government and State purposes, imposes upon individuals a great variety of capitation, inheritance, license, occupation, privilege, and income taxes. That act not only exempts the property of individuals from taxation for purposes of providing State revenue, but also exempts the property of corporations from taxation for such purposes as well. The said act imposes no property taxes on either corporations or individuals. It is denied that the Legislature of North Carolina, by the passing of the said act or otherwise, has exempted a large class of property from liability to State taxation and recouped the loss of revenue thereby occasioned by imposing the entire burden upon the properties of corporations. The defendants aver that it is competent for the State of North Carolina to adopt a

policy of taxation; that by the Revenue Act and the Machinery Act of 1921 it has adopted a policy of raising the revenues for the support and maintenance of the subdivisions of the State by and through property taxes, and of raising the revenues for the support and maintenance of the State Government and for expenditures for State purposes by and through taxes other than taxes on property, to-wit, the various capitation, inheritance, license, occupation, privilege or franchise, and income taxes imposed by the Revenue Act, which are imposed both on corporations and individuals, with certain legitimate classifications, and which are all imposed uniformly upon all persons, individual or corporate, within the respective classifications.

66 It is denied that this policy or scheme of taxation is at variance with, or violates, the Constitution of North Carolina and it is denied that Section 82 (6½) of the Revenue Act imposes or attempts to impose any unequal or additional or illegal taxation burden upon the plaintiff or that it is void for any reason. It is denied that Section 82 (6½) imposes a tax on property of the plaintiff or that it denies to the plaintiff the equal protection of the law or deprives it of its property without due process of law, or violates the Fourteenth Amendment to the Constitution of the United States.

It is denied that under the scheme of taxation in existence in North Carolina the plaintiff is charged with an undue proportion of the expenses of the State Government, and it is denied that individual tax payers pay no State taxes, as alleged in the complaint. As hereinbefore alleged, individuals as well as corporations, contribute to the support of the State Government and to its revenues by the payment of the various taxes imposed by the said Revenue Act.

It is denied that the said Franchise Tax on railroads imposed by Section 82 (6½) is a tax upon the privilege of engaging in interstate commerce, or that it is unconstitutional and void as such, or that it violates the commerce clause of the Constitution of the United States. The defendants aver that the said tax is a privilege or franchise tax imposed upon all railroads, domestic and foreign, for the privilege of exercising their franchises in the State of North Carolina, that is, for the privilege of engaging in strictly intrastate commerce within the said State. They further aver that by reason of the fact that the said franchise or privilege tax is admeasured, not by any earnings from interstate commerce nor by any properties outside of North Carolina, but only by the total properties of the plaintiff within the State of North Carolina; the tax is in no way a burden upon interstate commerce; that it is not a tax for the privilege of engaging in interstate commerce, nor its payment made a condition precedent to the right to engage in such commerce, and that it violates no part of the Constitution of the United States or of the Constitution of North Carolina.

67 11. The allegations of article eleven are denied and it is denied that any excessive or erroneous assessment has been made against the plaintiff.

12. The allegations of article twelve are denied. The defendants aver that the tax imposed by the said Section 82 (6½) is not a

property tax and has no effect to bring about double taxation. They aver that it is entirely competent for the State of North Carolina to impose upon the plaintiff the said franchise or privilege tax in addition to ad valorem property taxation, and it is denied that the scheme of taxation imposed by the statutes of North Carolina takes the property of the plaintiff without due process of law or denies to it the equal protection of the law, or violates either the Fourteenth Amendment to the Constitution of the United States or Article V, Section 3, of the Constitution of North Carolina.

13. The truth of the first sentence of article thirteen is admitted. It is admitted that the railroad assessments prior to 1921 were fixed by a board of three, known as the State Tax Commission, but it is denied that under the laws of 1921 any assessment is or was fixed by the Revenue Commissioner or will be made by him until the year 1924. On the other hand, it is averred that the assessment made by the State Tax Commission in and for the year 1920 is and will be the only assessment of property of railroads in North Carolina to be made until 1924. The question of the right of the plaintiff to appeal from an assessment of its property cannot arise until the next quadrennial assessment is made in 1924. The same law which gave other tax payers the right to a review of the 1920 or revaluation assessment gave the railroads the same right of review before the Commissioner of Revenue, and the plaintiff was granted this right of review, as it alleges in its complaint.

The defendant further aver that under the laws and procedure of North Carolina, the writ of certiorari would lie at the suit of the plaintiff to the said Commissioner of Revenue from the Superior Court of that State and that by this writ the plaintiff may at any time take up for review and appeal any proceedings by the said Commissioner of Revenue in which its legal and constitu-
68 tional rights may be deemed to be violated. It is denied that anything in the tax laws of North Carolina constitutes a denial to the plaintiff of the equal protection of the law, or a violation of the uniformity clause of the Constitution of North Carolina.

The defendants further aver that the assessment of which the plaintiff is now complaining in its complaint is the assessment made by the former State Tax Commission and approved by the Legislature of 1920; that the Act of 1921 conferred upon the Commissioner of Revenue, upon the petition of the plaintiff, the power to review the assessment so made by the State Tax Commission and approved by the Legislature of 1920 as aforesaid; that the plaintiff did not appeal from, or in any way invoke an interference with, the assessment made by the State Tax Commission and approved by the Legislature in Extra Session in 1920, as aforesaid, but did in 1921 petition the Commissioner of Revenue to reduce the said assessment under the power conferred upon him by the Act of 1921; that, as hereinbefore stated, the said Commissioner of Revenue did decline to reduce the said assessment, and if the plaintiff felt itself aggrieved by this action of the Commissioner of Revenue, then it was competent for, and incumbent upon, the plaintiff to seek relief in the courts

of North Carolina; that the plaintiff could have made application to the Superior Court of the said State for a writ of certiorari to have the action of the Commissioner of Revenue in this manner reviewed, or could have sought injunction against the said Commissioner in such court, and could have thus had its grievances, if any, redressed.

14. It is admitted that the plaintiff will owe to the counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment of its property for taxes in the State of North Carolina. And the defendants aver that the said legal assessment for 1921 is the sum of the apportionable railroad property assessment of $34,081,500 plus whatever may be found to be the correct total assessment of property locally assessed, as hereinbefore stated. The defendants further aver that the plaintiff will
69 owe to the State the franchise or privilege tax of one-tenth of one per cent upon the said sum.

15. Answering the allegations of article fifteen, the defendants deny that the plaintiff has no remedy provided by the North Carolina Statutes to contest the validity of a tax payable direct to the State Treasurer other than a suit for injunction; they aver that the writ of certiorari would lie for such purpose as hereinbefore alleged and that the plaintiff has an adequate remedy at law of which it has not availed itself. It is denied that this suit is brought because the plaintiff has no adequate remedy at law. It is denied that unless the defendants be joined herein the plaintiff will be required to institute a number of suits. It is denied that unless the defendants are restrained they will proceed to collect any tax on any illegal assessment. And it is denied that the taxes due by the plaintiff will become a cloud upon the title to the property of the plaintiff against which equity should afford any relief. The defendants aver that the taxes of which the plaintiff complains are legal, and the lien thereof is legal.

70 *Prayer.*

Wherefore, The defendants, having fully answered the complaint filed in this suit, pray the Court that every and singular the prayers of the said complaint be denied and that the same be dismissed at the costs of the plaintiff.

JAMES S. MANNING,
Attorney-General of North Carolina.
FRANK NASH,
Asst. Attorney-General of North Carolina.
Solicitors for the Defendant.

WILLIAM P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

A. D. Watts, being duly sworn, says that he is one of the defendants in the above entitled suit, that he has read the foregoing answer to the complaint, and that it is true, of his own knowledge, except as to matters therein stated on information and belief, and as to them he believes it to be true.

A. D. WATTS.

Sworn to and subscribed before me this — day of November, 1921.

W. P. STACY,
Associate Justice N. C. Supreme Court.

960

Comparative Statement of Taxable Values for the Years 1919 and 1920, Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral, and Quarry Properties, Average Value per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed with County Supervisors.

(NOTE.—This statement does not include railroad and public service corporations, banks, and corporate excess assessed by the State Tax Commission.)

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Alamance, 1919.....	257,742	$2,786,845	$10.81	$2,058,055	$6,844,638	$5,532,968	$11,377,606
Alamance, 1920.....	262,836	9,966,036	37.92	7,159,464	24,934,832	10,537,710	35,472,542
Alexander, 1919.....	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920.....	165,761	4,864,885	29.30	681,423	6,527,000	1,956,886	8,483,886
Alleghany, 1919.....	143,300	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920.....	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919.....	328,634	2,663,408	8.11	964,020	4,379,115	3,781,961	8,161,076
Anson, 1920.....	329,715	10,529,114	31.93	2,855,697	13,384,811	6,831,284	20,216,095
Ashe, 1919.....	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920.....	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919.....	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920.....	130,932	3,863,827	29.51	308,197	4,793,754	1,133,928	5,927,682
Beaufort, 1919.....	379,913	3,422,611	9.00	2,534,192	6,365,173	4,231,976	10,597,149
Beaufort, 1920.....	396,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919.....	450,883	3,040,339	6.74	862,130	4,055,859	3,467,887	7,523,746
Bertie, 1920.....	400,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919.....	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
Bladen, 1920.....	524,585	10,092,335	19.24	794,790	11,630,040	3,418,325	15,048,365
Brunswick, 1919.....	476,230	2,406,552	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920.....	502,593	5,477,845	10.90	970,035	7,953,027	2,017,305	9,970,332
Buncombe, 1919.....	312,643	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Buncombe, 1920	.....	.....	....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920	316,304	7,164,477	22.65	1,932,615	11,047,772	4,793,304	15,841,076
Cabarrus, 1919	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920	222,036	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919	227,055	1,809,693	7.97	669,221	3,502,721	2,142,059	5,644,780
Caldwell, 1920	258,296	7,792,632	30.17	2,896,422	13,257,242	4,458,020	17,715,262
Camden, 1919	145,857	1,083,289	7.42	58,607	1,288,061	672,329	1,960,390
Camden, 1920	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919	239,554	1,703,631	7.11	1,056,084	2,993,060	1,586,379	4,579,439
Carteret, 1920	233,162	7,972,149	34.19	1,650,790	10,405,339	2,940,095	13,345,434
Caswell, 1919	262,748	1,686,517	6.42	116,680	1,803,197	2,188,466	3,991,663
Caswell, 1920	268,746	8,743,808	32.54	309,340	9,053,148	2,920,697	11,973,845
Catawba, 1919	256,932	2,460,000	9.58	1,604,830	4,692,916	5,370,515	10,063,431
Catawba, 1920	254,423	12,339,008	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919	404,913	3,063,242	7.04	504,565	4,082,437	3,551,644	7,644,081
Chatham, 1920	435,773	10,063,328	23.09	1,243,459	11,813,037	4,594,017	16,407,054
Cherokee, 1919	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919	99,967	1,159,788	11.60	582,677	2,007,621	1,778,608	3,786,229
Chowan, 1920	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919	278,395	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920	277,843	16,422,057	59.11	4,554,698	28,158,726	11,168,356	39,327,082
Columbus, 1919	458,631	3,429,666	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920	.....	.....	....	.....	15,789,229	6,600,000	22,389,229
Craven, 1919	364,212	2,421,364	6.65	4,864,543	7,617,220	4,097,447	11,714,673

Craven, 1919	364,212	2,421,364	6.65	4,364,543	7,617,226	4,697,447	11,714,673
Craven, 1920	323,112	15,488,629	47.94	13,256,829	28,745,458	9,352,424	38,097,882
Cumberland, 1919	338,497	3,116,070	9.21	2,513,375	6,348,011	4,990,251	11,338,262
Cumberland, 1920	358,317	12,835,535	35.82	7,393,804	20,522,039	7,567,734	28,089,773
Currituck, 1919	148,426	1,513,584	10.20	.....	1,733,291	705,677	2,438,968
Currituck, 1920	125,080	4,541,124	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1919	208,400	494,859	2.37	100,929	626,963	301,642	928,605
Dare, 1920	.....	.....	....	.....	2,282,743	593,808	2,876,551
Davidson, 1919	35,442	.....	....	.....	6,957,305	3,806,554	10,763,859
Davidson, 1920	355,066	15,295,793	....	6,611,775	30,638,102	9,691,903	40,330,005
Davie, 1919	160,640	1,529,050	9.52	358,529	2,294,469	3,043,548	5,338,017
Davie, 1920	162,798	7,224,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894
Duplin, 1920	457,279	23,071,185	50.45	1,100,364	24,211,549	7,285,518	31,497,067
Durham, 1919	178,534	3,569,232	19.99	8,021,399	14,777,121	20,808,813	35,585,934
Durham, 1920	182,608	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	303,562	4,131,420	13.60	3,036,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,680	2,871,776	12.45	9,546,925	14,234,803	22,223,137	36,457,990
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,486	9,172,680
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,700	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,506	8,192,666	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,289	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,986,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	326,225	5,631,242	1,663,562	7,294,894
Graham, 1919	177,414	984,505	5.55	28,350	2,132,988	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,869,736	1,337,240	6,206,976
Granville, 1919	319,516	2,839,542	8.88	1,267,086	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	38.20	3,463,640	16,088,145	6,775,885	22,864,030
Greene, 1919	159,369	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,466	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,587	48,173,459
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,889	5,425,881	10,168,771

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Harnett, 1920	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919	321,154	3,037,607	9.45	1,779,507	6,120,975	2,762,717	8,883,692
Haywood, 1920	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,423,194
Hertford, 1919	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,869
Hertford, 1920	201,537	8,738,122	43.36	1,991,046	10,747,168	3,609,665	14,356,833
Hoke, 1919	224,703	2,129,767	9.48	300,364	2,653,091	2,020,935	4,674,026
Hoke, 1920	221,230	9,967,460	45.05	944,313	11,244,263	2,995,910	14,240,173
Hyde, 1919	275,961	1,540,190	5.58	40,230	1,619,250	1,071,108	2,690,358
Hyde, 1920	420,604	11,837,110	28.14	443,911	12,281,021	2,035,801	14,316,822
Iredell, 1919	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920	364,507	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919	291,748	1,555,849	5.33	188,013	2,168,624	1,993,645	4,162,269
Jackson, 1920	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919	481,735	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920	498,946	32,620,897	65.38	7,092,072	42,030,148	15,477,315	57,507,463
Jones, 1919	291,477	1,666,958	5.72	260,788	1,969,921	1,378,496	3,348,417
Jones, 1920	294,634	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919	155,733	1,467,390	9.42	926,313	2,735,378	2,144,202	4,679,580
Lee, 1920	163,139	6,712,698	41.15	1,019,819	8,706,469	3,371,944	12,078,413
Lenoir, 1919	222,375	2,205,289	9.92	2,329,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920	239,868	20,753,505	86.52	11,629,585	33,857,010	10,910,400	44,767,410
Lincoln, 1919	179,225	2,119,195	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920	193,391	7,504,532	38.80	2,009,709	12,584,088	5,417,219	18,001,307
Macon, 1919	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920	275,716	5,011,888	18.18	189,631	5,201,469	1,330,869	6,532,338
Madison, 1919	262,922	2,108,684	8.02	302,207	3,241,892	2,617,167	5,858,559

Madison, 1920	278,983	7,576,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,956,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	44.72	2,699,065	15,613,311	6,799,760	22,413,071
McDowell, 1919	254,751	.....	....	.....	2,675,983	1,042,136	3,718,119
McDowell, 1920	241,210	2,814,834	11.67	1,540,981	8,139,746	3,861,589	12,001,385
Mecklenburg, 1919	313,806	4,032,705	12.85	13,112,770	23,133,825	15,082,064	38,217,889
Mecklenburg, 1920	314,277	14,423,868	67.31	56,054,830	93,500,878	33,585,655	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,203	4,340,208	1,133,117	5,473,325
73 Montgomery, 1919	288,986	1,766,532	6.11	629,642	2,858,839	2,478,702	5,337,541
Montgomery, 1920	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
Moore, 1919	415,165	3,178,355	7.65	1,871,452	5,434,221	3,005,237	8,439,458
Moore, 1920	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
Nash, 1919	335,415	3,878,799	11.50	3,219,117	7,865,680	8,391,768	16,257,448
Nash, 1920	323,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
New Hanover, 1919	92,962	2,100,440	22.59	10,087,280	14,941,453	5,406,709	20,348,162
New Hanover, 1920	114,132	3,171,311	28.05	14,309,005	37,517,377	12,528,021	50,045,398
Northampton, 1919	318,278	3,705,130	11.64	623,790	4,463,235	4,436,914	8,900,149
Northampton, 1920	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
Onslow, 1919	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
Onslow, 1920	416,808	7,308,697	20.69	992,565	10,807,997	2,756,647	13,564,644
Orange, 1919	241,018	1,951,875	7.78	1,051,230	3,916,209	3,078,757	6,994,966
Orange, 1920	244,404	7,866,281	32.19	2,219,764	10,086,045	6,222,234	16,308,279
Pamlico, 1919	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
Pamlico, 1920	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
Pasquotank, 1919	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
Pasquotank, 1920	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
Pender, 1919	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
Pender, 1920	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
Perquimans, 1919	151,630	1,431,991	9.44	473,929	2,009,068	1,684,783	3,693,851
Perquimans, 1920	135,126	4,579,632	33.89	1,035,330	5,739,609	2,359,005	8,098,714
Person, 1919	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
Person, 1920	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,070,795
Pitt, 1919	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
Pitt, 1920	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,391	61,871,989
Polk, 1919	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
Polk, 1920	130,925	3,221,221	24.61	403,878	5,043,541	3,691,363	8,734,904

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Randolph, 1919	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920	489,717	13,352,406	27.27	2,842,531	18,468,305	7,049,532	25,517,837
Richmond, 1919	271,037	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,762
Richmond, 1920	298,155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919	508,290	5,661,400	11.14	2,326,580	9,063,675	8,063,294	17,126,969
Robeson, 1920	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919	345,078	3,213,287	9.08	2,215,162	8,399,673	7,917,904	16,317,477
Rockingham, 1920	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919	530,046	3,850,395	7.26	678,681	4,539,778	4,864,205	9,403,983
Sampson, 1920	578,092	16,169,478	28.00	2,181,805	22,717,990	9,305,331	32,023,240
Scotland, 1919	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471
Stanley, 1919	228,929	1,794,885	7.84	1,109,296	4,727,603	3,983,469	8,711,172
Stanley, 1920	245,668	10,574,057	43.04	3,745,636	21,225,000	10,608,893	31,833,893
Stokes, 1919	274,915	2,364,379	8.60	212,216	2,618,965	3,512,301	6,131,266
Stokes, 1920	286,724	10,328,827	36.02	544,334	10,873,161	4,310,595	15,183,756
Surry, 1919	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845,186	26,374,605
Swain, 1919	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919	197,595	1,518,091	7.68	382,984	2,044,250	1,308,115	3,352,365
Transylvania, 1920	198,554	4,684,341	23.59	462,625	5,304,466	2,597,049	7,901,515
Tyrrell, 1919	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830

Union, 1919	389,203	2,975,210	7.65	1,714,833	5,092,979	6,205,125	11,298,104
Union, 1920	392,429	15,605,830	39.77	4,671,356	21,444,971	10,172,675	31,617,646
Vance, 1919	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,165	10,121,596
Vance, 1920	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,735	26,519,301
Wake, 1919	531,678	5,703,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920	506,877	23,181,356	45.73	25,987,726	53,739,885	18,726,589	73,900,221
Warren, 1919	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919	200,868	1,586,739	7.90	501,569	2,180,780	1,556,516	3,737,296
Washington, 1920	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919	207,881	1,632,998	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920	217,097	6,750,358	31.09	501,234	8,820,897	2,419,708	11,240,605
Wayne, 1919	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920	339,270	27,607,644	81.37	14,860,093	47,323,132	17,666,582	64,989,714
Wilkes, 1919	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920	469,130	7,999,140	17.05	880,767	12,352,003	4,357,959	16,709,962
Wilson, 1919	223,631	2,866,661	12.82	3,109,243	6,323,509	9,005,000	15,328,509
Wilson, 1920	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,562	60,470,862
Yadkin, 1919	211,977	1,909,500	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919	174,935	1,142,880	6.53	83,079	1,335,074	1,204,819	2,539,893
Yancey, 1920	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

74 *Affidavit of W. L. Stanley.*

Filed Jan. 7, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY CO.

v.

A. D. WATTS, Commissioner of Revenue, and Others.

Complainant's Affidavits in Support of Bill of Complaint.

Affidavit of W. L. Stanley, General Attorney, in Charge of Taxation for Seaboard Air Line Railway Company.

STATE OF GEORGIA,
County of Fulton:

This day personally appeared before me, C. L. Chappell, a Notary Public in and for the State and County aforesaid, W. L. Stanley, who after being sworn, stated that he is General Attorney of the Seaboard Air Line Railway Company; that his duties include the making of returns to enable the authorities of the several states the Seaboard traverses to assess the value of the property of the Seaboard Air Line Railway Company for taxing purposes, of which work he has been in charge for approximately sixteen years; that this duty necessitates a general knowledge of the values of property, and especially that of railroad property, as well as familiarity with the business of the Seaboard Air Line Railway Company, its earnings, volume of traffic, operating expenses and the like; that he has made a study of the values and assessments made by the officials of North Carolina; that examination of the records in North Carolina indicates that the assessment of real property other than railroads in the twenty-six
75 counties in that State traversed by the Seaboard, and the percentage of decrease in the assessment in 1921 as compared with 1920 of such real property, is as follows:

County.	Assessed value of land, timber, manufacturing properties, minerals, quarry, and town lots for the year 1920.	Percentage of reduction allowed in 1921 on assessment of 1920.	Assessed value of land, timber, manufacturing properties, minerals, quarry, and town lots for the year 1921.
Anson	$13,384,811	20%: 10% in towns	$10,993,019
Bertie	13,958,782	25%	10,469,086
Bladen	11,630,040	15%	9,885,534
Brunswick	7,953,027	None	7,953,027
Chatham	11,813,037	25%	8,859,778
Cleveland	28,158,726	15%	23,934,917
Columbus	15,789,229	None	15,789,229
Durham	43,426,847	25%	32,570,120
Franklin	16,594,580	40%	9,956,748
Gaston	52,344,289	25%	39,258,217
Granville	16,088,145	33⅓%	10,725,430
Halifax	35,636,872	40%	21,382,123
Lee	8,706,469	33⅓%	5,804,313
Lincoln	12,584,088	25%	9,348,066
Mecklenburg ...	93,500,878	16⅔%	77,917,398
Moore	15,604,749	25%; 10% in towns	12,489,601
New Hanover ..	37,517,377	None	37,517,377
Northampton ...	12,367,534	33⅓%	8,245,023
Richmond	18,450,390	Revaluation	18,151,048
Robeson	48,024,939	Revaluation	28,772,438
Rutherford	19,912,642	10%	17,921,378
Scotland	21,319,716	Revaluation	13,847,748
Union	21,444,971	25%	16,083,738
Vance	17,856,566	33⅓%	11,904,378
Wake	53,739,885	None	53,739,885
Warren	12,373,446	Revaluation	9,688,101
	$660,182,035		$523,297,710

That the weighted average percentage in the decrease of the assessment of real property for 1921 compared with the assessment
76 of 1920 in said twenty-six counties, is 20.73 per cent; that from his knowledge of the values of property generally in North Carolina and of railroad property in particular, the property of the Seaboard Air Line Railway Company in that state should be reduced to as great an extent as, if not greater than, the property other than railroads in the twenty-six counties, which are traversed by said railroad.

He further states:

1. That under an Act of the General Assembly of North Carolina, ratified the eleventh day of March, 1919, and commonly known as "The Revaluation Act," all property including that of railroads was

required to be assessed as of the first day of May, 1919 at its true value in money; that in conformity with and in pursuance of this act, the State Tax Commission fixed the value of the property of the Seaboard Air Line Railway Company in the State of North Carolina as of May 1st, 1919 at $34,768,440; that said assessment continued in effect for the year 1920, and that the Commissioner of Revenue of North Carolina has fixed the value of said property as of May 1st, 1921 at the foregoing figure, to-wit: $34,768,440.

2. That it is assumed that the State Tax Commission in arriving at the value for taxing purpose of the property of the Seaboard Air Line Railway Company in North Carolina as of May 1st 1919, complied with section 64 of the Machinery Act, which expressly requires, "a due consideration of the actual cost of replacing the property." In ascertaining the value of the railway's tangible property on a given date, the market price of the several elements used for reproducing the same must be considered. The major items of these are its right of way, station and terminal grounds and buildings, rails and other track material, including cross ties, grading, etc.; buildings and structures, including timber, concrete, masonry and other materials; locomotives, coaches, freight and passenger cars, shop machinery, etc.

The following comparison in market prices as of May 1st, 1920 and May 1st, 1921 of some of the major items of material
77 and equipment necessary in reproducing a railroad, indicates the value in 1921 is considerable less than in 1920:

	May 1, 1920.	May 1, 1921.	Percentage of decrease.
Cross ties, each	$1.36	$.75	45%
Piling, Long Leaf Pine, per lineal foot	.14	.10	29%
Timber, per M feet, B. M.	60.00	18.00	70%
Angle Bars, per cwt.	4.40	3.25	26%
Pig Iron, per G. T.	45.00	23.50	48%
Steel Castings, per cwt.	9.75	7.725	21%
Tin (Pig), per lb.	.60	.333	44%
Lead (Pig), per lb.	.096	.055	43%

Based on rates of pay paid by the Railway Company for construction labor on May 1st, 1920 and May 1st, 1921 respectively, the average reduction in the cost of labor which is assumed would have been employed in the construction of the railway's lines of railroad on said dates, is 27.01 per cent.

The naked value of land for railroad purposes is directly dependent upon the market value of adjacent land and is affected by the same economic conditions. Consequently if such adjacent land has depreciated in value, there must be a corresponding decrease in the value of railroad land.

3. That the net operating income of the Seaboard Air Line Railway Company in North Carolina for the calendar year 1918, immediately preceeding the assessment of its property as of May 1st, 1919 was $3,112,693.46; for the year 1919, it was $2,412,076.65; for the

year 1920, it was $2,534,305.84; for the period of January 1st to April 30th, 1921, it was $704,965.86, or equated upon an annual basis $2,114,897.58. It will, therefore, be observed that the net operating income of the Seaboard in North Carolina has, as compared to the year 1918, decreased by the following percentages:

78
1919..... 22.5 per cent.
1920..... 18.5 per cent.
1921..... 32.0 per cent (based upon the first four months thereof.)

As compared to the year 1918, immediately preceeding the date of the revaluation of the property of the Seaboard Air Line Railway Company in North Carolina, the net operating income of said railway as a system has decreased as follows:

1919..... 48.9 per cent.
1920..... 123.0 per cent.
1921..... 16.8 per cent (based upon the first four months thereof.)

4. That curtailment in the production of agricultural products and reduction in the output of factories in North Carolina during the year 1921, as compared to the year 1920, which resulted in a deflation of the value of land devoted to agricultural pursuits, as well as a deflation in the value of manufacturing enterprises, and their outputs have materially affected the volume of business handled by this railroad in the State of North Carolina. This is demonstrated by the fact, that for the first four months of the year 1920, it transported to all stations in North Carolina, 1,022,143 tons of freight, both interstate and intrastate; while for the corresponding months of 1921, it transported to such stations, only 692,016 tons of such freight, or a decrease of 32.3 per cent; during the period, January 1st to April 30th, 1920 said railway forwarded from all stations in North Carolina 962,770 tons of freight, both interstate and intrastate, while for the same period of 1921 it forwarded from such stations 639,699 tons of freight, or a decrease of 33.6 per cent; for the first four months of 1920, the Seaboard Air Line Railway Company handled from all stations in North Carolina, 471,251 passengers, both interstate and intrastate, while for the same period of 1921, it handled from such stations only 421,155 passengers, or a decrease of 10.6 per cent; for months subsequent to April, 1921, as
79 compared to the same months of the previous year, the decrease has been materially larger, running from 29 per cent in May to 40 per cent in August.

The number of loaded cars moved over the entire Seaboard System the first six months of 1920 was 927,208 and for the same period of 1921, 686,739, a decrease of 240,469 or 25.93 per cent. The number of loaded cars moved over the Virginia and North Carolina Divisions, the mileage of which is almost entirely within the State of North Carolina, for the first six months of 1920 was 353,306 and for the same period of the year 1921, 245,901, a decrease of 107,405 or 30.4 per cent.

5. That when the assessment of the Seaboard Air Line Railway Company's property in North Carolina was made as of May 1st, 1919, and prior thereto, its expenses of operation were materially less than they have been since that date. It therefore follows that the sum of money available for the payment of taxes, interest and finally representing net income was materially greater prior to May 1st, 1919, than it has been subsequent to that date. This is shown by the following statement of the amount of each dollar of gross earnings in North Carolina for the year indicated required to pay operating expenses exclusive of taxes, in that state:

1916	$.5549	
1917	.6053	
1918	.6937	
1919	.7570	
1920	.7944	
1921	.7995	(first four months thereof.)

6. That the business done by the Seaboard Air Line Railway Company in North Carolina is largely interstate, consisting principally of freight that is loaded and discharged in other states, and simply passing through the State of North Carolina in transit. During the years 1919, 1920 and for the first four months of 1921, approximately three-fourths of the total North Carolina earnings were interstate.

While it is true that the net operating income of said railway in North Carolina by virtue of the foregoing is proportionately larger than in any other state, it is necessary to apply a large per-
80 centage of North Carolina's net earnings to the expenses of the operation of the system as a whole and to the reduction of the deficit existing between gross earnings and operating expenses in other states, on business originating in or destined to such states and passing through the State of North Carolina.

7. That a statement is hereto attached, marked "Exhibit A," and asked to be considered as a part of this affidavit, showing the par and market value of the stocks and bonds of the Seaboard Air Line Railway Company as of May 1st, 1919, 1920 and 1921. By reference to said exhibit, it will be observed that the market value of the stocks and bonds of the Seaboard Air Line System allocated to North Carolina in the manner indicated in said exhibit have decreased as of May 1st, 1920, when compared with May 1st, 1919, 21.39 per cent, and as of May 1st, 1921, compared with May 1st, 1919, have decreased 19.66 per cent. If instead of the basis of allocation to North Carolina of the Seaboard's securities as used in exhibit "A," North Carolina's proportion of the market value of such securities is allocated to it upon a track mileage basis (17.61 per cent), the market value of North Carolina's proportion of such securities as of May 1st, 1920, compared to May 1st, 1919, would show a decrease of 23.34 per cent, and as of May 1st, 1921, when compared with May 1st, 1919, would show a decrease of 21.7 per cent.

The market value of quite a number of the Seaboard's securities

SAL.

EXHIBIT "A" AC
OF THE SE

AS OF MAY

Stock	System Par Value	System Market Value
Common	$37,019,400	$ 3,331,746
Preferred	23,931,400	4,666,623
Total Stock	60,950,800	7,998,369
Bonds		
S. A. L. Ry. Co., 1st & Cons. Mtg.	27,777,500	22,222,000
S. A. L. Ry. Co., 1st Mtg.	12,775,000	9,070,250
S. A. L. Ry. Co., Refunding Mtg.	19,350,000	11,029,500
Seaboard & Roanoke Ry. 1st Mtg.	2,500,000	2,381,250
Raleigh & Gaston Ry., 1st Mtg.	1,200,000	1,140,000
Durham & Northern Ry., 1st Mtg.	100,000	95,000
Raleigh & Augusta Air Line Ry., 1st Mtg.	1,000,000	1,020,000
Carolina Central Ry., 1st Cons. Mtg.	3,000,000	2,310,000
Ga. Carolina & Northern Ry., 1st Mtg.	5,360,000	5,078,600
Ga. & Ala. Ry., 1st Cons. Mtg.	6,085,000	5,522,137
Ga. & Ala. Ter. Co., 1st Mtg.	1,000,000	900,000
Fla. Central & Pen. Ry., 1st Mtg.	3,000,000	3,045,000
Fla. Central & Pen. Ry., 1st Mtg. L.G.X.	346,000	321,780
Fla. Central & Pen. Ry., 1st Cons. Mtg.	4,372,000	4,044,100
Southbound Ry., 1st Mtg.	2,033,000	1,981,350
S. A. L. Ry. Atl.-Bghm., 1st Mtg.	5,910,000	4,432,500
Fla. West Shore Ry., 1st Mtg.	755,000	717,250
S. A. L. Ry. Co., 2 yr. Gold Notes	4,000,000	3,900,000
S. A. L. Ry. Co., Adj. Mtg.	25,000,000	12,375,000
Equip Trust Bonds	4,367,000	4,192,320
Total Bonds	129,930,500	95,728,057
Secured Notes	1,250,000	1,250,000
Sec. of Treas. of U. S. Notes		
Total All Securities	192,131,300	104,976,426

A—Applicable to entire system—prorated on owned mileage basis.
B—Applicable to North Carolina and other states—prorated on basis of mortgaged
C—Applicable to State of North Carolina only.
D—Par value applicable to all states ($12,853,000) prorated on owned mileage basis
E—Not applicable to North Carolina.
NOTE: Market value based on sales and market quotations as near May 1st as po
CERTIFIED to as exhibit "A," accompanying affidavit of W. L. Stanley, under date

page 88

"A" ACCOMPANYING AFFIDAVIT OF W. L. STANLEY, SHOWING PAR VALUE AND MARKET VALUE OF SECURITIES
HE SEABOARD AIR LINE RAILWAY COMPANY OUTSTANDING FOR SYSTEM AND APPLICABLE TO STATE OF
NORTH CAROLINA, AS OF MAY 1ST, 1919, MAY 1ST, 1920, AND MAY 1ST, 1921.

MAY 1ST, 1919		AS OF MAY 1ST, 1920				AS OF MAY 1ST, 1921				
	North Carolina		System		North Carolina		System		North Carolina		
ne	Par Value	Market Value	Par Value	Market Value	Par Value	Market Value	Par Value	Market Value	Par Value	Market Value	Basis Allocated to N. C.
	$ 6,659,790	$ 599,381	$ 37,019,400	$ 2,869,004	$ 6,659,790	$ 516,134	$ 37,019,400	$ 2,221,164	$ 6,659,790	$ 399,587	A
	4,305,259	839,525	23,931,400	3,111,082	4,305,259	559,684	23,931,400	2,333,312	4,305,259	419,763	A
	10,965,049	1,438,906	60,950,800	5,980,086	10,965,049	1,075,818	60,950,800	4,554,476	10,965,049	819,350	
	2,312,255	1,840,804	27,777,500	12,499,875	2,312,255	1,040,515	27,777,500	13,333,200	2,312,255	1,109,382	D
	2,298,222	1,631,738	12,775,000	7,217,875	2,298,222	1,298,495	12,775,000	7,920,500	2,298,222	1,424,896	A
	3,481,065	1,984,207	19,350,000	8,514,000	3,481,065	1,531,669	19,350,000	7,594,875	3,481,065	1,366,318	A
	565,750	538,877	2,500,000	2,212,500	565,750	500,689	2,500,000	2,187,500	565,750	496,031	B
	1,200,000	1,140,000	1,200,000	960,000	1,200,000	960,000	1,200,000	984,000	1,200,000	984,000	C
	100,000	95,000	100,000	80,000	100,000	80,000	100,000	82,000	100,000	82,000	C
	1,000,000	1,020,000	1,000,000	900,000	1,000,000	900,000	1,000,000	935,000	1,000,000	935,000	C
	3,000,000	2,310,000	3,000,000	2,040,000	3,000,000	2,040,000	3,000,000	1,905,000	3,000,000	1,905,000	C
	287,832	272,721	5,360,000	4,636,400	287,832	248,975	5,360,000	4,582,800	287,832	246,096	B
	-------	-------	6,085,000	5,050,550	-------	-------	6,085,000	4,807,150	-------	-------	E
	-------	-------	1,000,000	835,000	-------	-------	1,000,000	750,000	-------	-------	E
	-------	-------	3,000,000	2,940,000	-------	-------	3,000,000	2,745,000	-------	-------	E
	-------	-------	346,000	359,840	-------	-------	344,000	295,840	-------	-------	E
	-------	-------	4,372,000	3,497,600	-------	-------	4,372,000	3,585,040	-------	-------	E
	-------	-------	2,033,000	1,636,565	-------	-------	2,033,000	1,626,400	-------	-------	E
	-------	-------	5,910,000	3,546,000	-------	-------	5,910,000	3,486,900	-------	-------	E
	-------	-------	755,000	607,755	-------	-------	755,000	604,000	-------	-------	E
	719,600	701,610	4,000,000	2,700,000	719,000	485,730	1,000,000	720,000	179,900	129,528	A
	4,497,500	2,226,262	25,000,000	8,500,000	4,497,500	1,529,150	25,000,000	8,000,000	4,497,500	1,439,200	A
	785,623	754,198	5,009,000	4,508,100	901,119	811,007	4,029,000	3,636,100	724,817	652,335	A
	20,247,847	14,524,417	130,572,500	73,242,080	20,363,343	11,426,230	126,590,500	69,771,305	19,847,341	10,769,288	
	224,875	224,875	1,250,000	1,250,000	224,875	224,875	625,000	625,000	112,438	112,438	A
							7,246,900	7,246,900	1,303,717	1,303,717	A
	31,437,771	16,188,196	192,773,300	80,472,166	31,553,267	12,726,923	195,413,200	82,197,681	32,028,545	13,004,793	

gaged mileage in each state.

basis—balance applicable to states other than North Carolina.

as possible.

date of December 31, 1921.

is less today than on May 1st, 1921. If the market value of the common and preferred stock and the adjustment mortgage bonds alone is considered as of December 28th, 1921, (all other securities being considered upon the basis of their market value as of May 1st, 1921), and if North Carolina's proportion is allocated to it upon the basis shown in exhibit "A," the total market value of all securities thus allocated to North Carolina would be 27.73 per cent less than North Carolina's proportion thereof, as of May 1st, 1919.

8. That considering the main line of the Seaboard System as extending through the State of North Carolina from Richmond-Portsmouth, Va., to Jacksonville, Fla., and from Hamlet, N. C., to
81 Birmingham, Ala., 53.08 per cent of the Seaboard mileage in North Carolina is branch line mileage. Of the total mileage in North Carolina, viz., 627.30 miles, approximately 196.05 miles or 31.25 per cent is unballasted.

9. That the Seaboard Air Line Railway Company owns in North Carolina no valuable terminals as compared to those owned by it in other states. In Portsmouth, Va. terminal facilities of this railroad are assessed at $1,424,812. It is generally conceded that property for taxation in Virginia is valued at 66⅔ per cent of its actual worth; upon this basis the terminal facilities of this railroad in Portsmouth, Va. upon a 100 per cent basis would be worth $2,137,429. In Georgia the terminal facilities of the railroad located at Savannah are assessed at $1,346,724. Property in Georgia assessed for taxation at approximately 62½ per cent of its actual value, which would result in an actual value of $2,020,288 upon the property of this railroad at Savannah, Ga. In Florida the terminal facilities of the railroad located principally at Jacksonville, Fernandina and Tampa are assessed at $1,515,000. There is no dispute that property in that state is assessed at 50 per cent of its actual value. Upon this basis the foregoing property of the railroad in Florida would be worth, upon a 100 per cent basis, $3,030,000. The total value ascertained in the manner indicated of these terminal facilities in the three states mentioned is therefore $7,187,717. As against this the Seaboard has terminal facilities in the State of North Carolina at Wilmington assessed at $239,400. This does not take into consideration the value of minor terminal properties in other states, nor the value of shop property located at Jacksonville, Fla. where one of the largest shops of the Seaboard is situated, there being no similar property in North Carolina, even approximately in size or value the shop property in the state mentioned.

W. L. STANLEY.

Subscribed and sworn to before me in Atlanta, Ga. this — day of December, 1921.

C. L. CHAPPELL,
Notary Public.

(Here follows table marked page 82.)

83 *Affidavit of H. W. MacKenzie.*

Filed Jan. 7, 1922.

Affidavit of H. W. MacKenzie, General Auditor.

STATE OF VIRGINIA,
City of Portsmouth, To-wit:

W. H. MacKenzie, being first duly sworn, makes oath that he is General Auditor of Seaboard Air Line Railway Company; and that the annexed statement is a true and correct statement of system gross revenue and expenses apportioned to the several states in which the Seaboard Air Line Railway Company operates for the year ending December 31st, 1916, as shown by the books and accounts of said Seaboard Air Line Railway Company.

(Signed) H. W. MACKINZIE.

Subscribed and sworn to before me this 30th day of December, 1921.

(Signed) J. M. DREWRY,
Notary Public.

My Commission expires April 21st, 1923.

I hereby certify that this is a case in which, by the laws of Virginia, no tax is required upon the seal.

(Signed) J. M. DREWRY,
Notary Public.

(NOTE.—A similar affidavit is attached to the statement for 1917, 1918, 1919, 1920 and the first four months of 1921.)

(Here follow tables marked pages 84-89, inclusive.)

S.A.L

SRoBr.

SEABOARD AIR LINE RAILWAY

STATEMENT OF SYSTEM GROSS REVENUE AND
TO THE SEVERAL STATES IN WHICH THIS RAI
YEAR ENDING DECEMBER

	VA.	N. C.	S. C.	
Gross Revenue:				
Interstate	$2,320,904.34	$5,819,168.47	$3,502,482.75	$3
Intrastate	424,964.33	1,716,987.45	869,712.06	1
Total	2,745,868.67	7,536,155.92	4,372,194.81	5
Operating Expenses	1,591,983.20	4,182,003.81	3,083,751.85	3
Taxes	92,861.01	284,367.96	156,286.38	
Uncollectible Railway Revenue	588.12	2,344.26	2,527.61	
Net Operating Income	1,060,436.34	3,067,439.89	1,129,628.97	1

page84

OMPANY

KPENSES APPORTIONED
OAD OPERATES, FOR THE
1916.

GA.	ALA.	FLA.	SYSTEM
1,735.86	$735,907.29	$2,499,607.56	$18,649,896.27
3,066.96	200,460.88	2,443,499.30	7,534,590.98
9,702.82	936,458.17	4,943,106.86	26,184,487.25
3,430.84	940,558.15	3,764,178.82	17,531,906.67
9,165.50	57,386.13	380,624.36	1,210,691.34
2,793.18	813.71	3,823.46	12,890.34
3,313.30	62,200.82 (red)	794,480.22	7,428,906.90

S.A.L

SEABOARD AIR LINE RAILWA

STATEMENT OF SYSTEM GROSS REVENUE AND
TO THE SEVERAL STATES IN WHICH THIS RA
YEAR ENDING DECEMBE

	VA.	N. C.	S. C.	
Gross Revenue:				
Interstate	$2,815,308.64	$6,909,478.13	$4,463,225.49	$
Intrastate	397,756.43	1,863,397.57	1,138,162.94	
Total	3,213,065.07	8,772,875.70	5,601,388.43	
Operating Expenses	1,940,196.71	5,310,467.75	3,971,791.16	
Taxes	117,344.58	320,840.77	193,594.49	
Uncollectible Railway Revenue	447.43	1,783.84	1,924.45	
Net Operating Income	1,146,076.35	3,139,783.34	1,434,078.33	

COMPANY

EXPENSES APPORTIONED
ROAD OPERATES, FOR THE
31, 1917.

GA.	ALA.	FLA.	SYSTEM
04,052.62	$ 770,540.95	$2,700,836.47	$22,052,442.80
13,900.77	212,963.28	2,066,522.72	8,292,703.71
07,953.89	983,504.23	5,466,359.19	30,345,146.01
84,854.88	1,073,200.38	4,377,666.98	21,717,177.86
31,414.00	68,802.65	418,256.54	1,380,253.08
2,130.96	619.52	2,927.50	9,833.70
09,533.55	159,118.32 (red)	667,506.17	7,237,881.42

S.A.L.

SEABOARD AIR LINE RAILWAY

STATEMENT OF SYSTEM GROSS REVENUE AND
TO THE SEVERAL STATES IN WHICH THIS RA
YEAR ENDING DECEMBER

	VA.	N. C.	S. C.	
Gross Revenue:				
Interstate	$3,864,382.16	$ 9,207,221.65	$6,131,520.23	$
Intrastate	454,896.67	2,018,972.92	1,468,015.08	
Total	4,319,278.83	11,226,194.57	7,599,535.31	
Operating Expenses	2,979,211.57	7,788,299.53	6,697,230.30	
Taxes	128,015.71	323,452.90	211,778.18	
Uncollectible Railway Revenue	445.24	1,748.68	2,183.90	
Net Operating Income	1,211,606.31	3,112,693.46	688,342.93	

COMPANY

EXPENSES APPORTIONED
.ROAD OPERATES, FOR THE
1, 1918.

GA.	ALA.	FLA.	SYSTEM
09,820.18	$1,005,326.58	$3,253,820.40	$29,492,091.20
44,614.84	255,180.91	2,889,334.41	9,431,014.83
84,435.02	1,350,507.49	6,143,154.81	38,923,106.03
19,053.15	1,680,836.18	6,782,162.21	33,846,792.94
70,538.47	69,612.63	466,038.08	1,469,434.87
2,077.79	587.34	2,876.12	9,919.07
92,765.61	400,528.66 (red)	1,107,920.50 (red)	4,096,959.15

S.A.L.

SEABOARD AIR LINE RAILWAY (

STATEMENT OF SYSTEM GROSS REVENUE AND E
TO THE SEVERAL STATES IN WHICH THIS RAIL
YEAR ENDING DECEMBER 3

	VA.	N. C.	S. C.	
Gross Revenue:				
Interstate	$3,880,552.46	$ 8,983,067.82	$6,100,338.08	$6,1
Intrastate	487,126.27	2,575,874.24	1,612,021.39	2,8
Total	4,367,678.73	11,558,942.06	7,772,359.47	8,9
Operating Expenses	3,290,266.13	8,750,415.15	7,277,780.43	8,2
Taxes	160,822.24	395,303.33	250,776.69	2
Uncollectible Railway Revenue	287.89	1,146.93	1,438.71	
Net Operating Income	916,302.47	2,412,076.65	242,363.64	3

COMPANY

EXPENSES APPORTIONED
ROAD OPERATES, FOR THE
1, 1919.

GA.	ALA.	FLA.	SYSTEM
19,661.81	$1,255,907.15	$3,877,354.77	$30,276,882.09
06,094.84	261,375.99	3,161,557.61	10,906,650.34
28,356.65	1,517,283.14	7,038,912.38	41,183,532.43
70,617.65	1,825,248.64	8,051,480.12	37,465,817.12
30,098.49	72,980.54	440,811.52	1,619,792.81
1,363.81	381.01	1,894.60	6,512.95
7,276.70	381,327.05 (red)	1,455,282.86 (red)	2,001,400.55

S. A. L.

SEABOARD AIR LINE RAILWA

STATEMENT OF SYSTEM GROSS REVENUE AN
TO THE SEVERAL STATES IN WHICH THIS R
YEAR ENDING DECEMBE

	VA.	N. C.	S. C.
Gross Revenue:			
Interstate	$4,295,694.93	$10,391,329.80	$7,185,714.74
Intrastate	605,229.38	3,255,293.84	2,026,123.21
Total	4,900,924.31	13,646,623.64	9,211,837.95
Operating Expenses	3,894,065.11	10,841,053.40	9,575,860.47
Taxes	142,873.04	269,895.57	333,844.10
Uncollectible Railway Revenue	343.58	1,368.83	1,717.05
Net Operating Income	863,642.58	2,534,305.84	699,583.67 (red)

COMPANY

EXPENSES APPORTIONED
LROAD OPERATES, FOR THE
31, 1920.

GA.	ALA.	FLA.	SYSTEM
6,938,736.72	$1,404,138.48	$ 5,825,513.68	$35,541,128.28
3,353,181.48	834,814.09	4,149,258.76	13,723,901.36
9,291,918.20	1,738,953.12	9,474,772.42	49,265,029.64
9,570,854.81	2,386,331.76	11,244,636.85	48,512,802.40
319,973.62	81,404.33	539,382.12	1,687,372.78
1,627.67	454.67	2,261.11	7,772.91
600,587.90 (red)	729,237.64 (red)	2,311,507.66 (red)	942,918.45 red)

S.A.L.

SEABOARD AIR LINE RAILWAY

STATEMENT OF SYSTEM GROSS REVENUE AND
TO THE SEVERAL STATES IN WHICH THIS RAI
FIRST FOUR MONTHS

	VA.	N. C.	S. C.	
Gross Revenue:				
Interstate	$1,184,893.71	$3,048,659.21	$2,402,721.83	$2,
Intrastate	160,108.48	1,041,395.46	591,571.93	
Total	1,345,002.19	4,090,054.67	2,994,293.76	3,
Operating Expenses	984,948.51	3,270,003.29	2,652,015.42	2,
Taxes	54,000.00	114,000.00	108,000.00	
Uncollectible Railway Revenue	272.41	1,085.52	1,361.23	
Net Operating Income	305,781.27	704,965.86	232,917.11	

MPANY

PENSES APPORTIONED
AD OPERATES, FOR THE

A.	ALA.	FLA.	SYSTEM
767.10	$389,261.91	$2,029,789.95	$11,502,093.71
289.41	98,326.98	1,380,347.40	4,160,039.66
956.51	487,588.89	3,410,137.35	15,752,133.37
983.29	530,025.70	3,517,619.27	13,544,595.48
000.00	30,000.00	186,000.00	600,000.00
290.54	360.53	1,792.85	6,163.06
782.68	72,797.34 (red)	295,274.77 (red)	1,601,374.81

90 *Additional Affidavit of H. W. MacKenzie.*

Filed Jan. 14, 1922.

STATE OF VIRGINIA,
City of Portsmouth:

Personally appeared before me, a Notary Public in and for the City of Portsmouth, State of Virginia, H. W. MacKenzie, a resident of the aforesaid City and State, who after being duly sworn says that:

1. He is the General Auditor of the Seaboard Air Line Railway Company and that he has held such office since March 1st, 1920; that from July 1st, 1918, to March 1st, 1920, he was Federal Auditor for the United States Railroad Administration, and as such Federal Auditor supervised the accounting for the operations of the Seaboard Air Line Railway Company's properties which during that period were under Federal Control and were operated by the United States Railroad Administration; that from 1913 to July 1st, 1918, he was Comptroller of the Seaboard Air Line Railway and its successor, the said Seaboard Air Line Railway Company; that as General Auditor, Federal Auditor and Comptroller, he prescribed the accounting methods of said railroad company and directed and supervised its accounts in accordance with such methods.

2. The business done by the Seaboard Air Line Railway Company in the State of North Carolina is largely interstate and during the years 1919, 1920 and for the first four months of 1921, approximately three-fourths of the total North Carolina earnings were derived from interstate buiness. Such interstate business in great part was trans-state traffic, having neither origin nor destination within the State of North Carolina, but was simply transported through that State. Such trans-state traffic consisted largely of such high-class revenue producing commodities as fruits, vegetables and other perishable products which are handled in special equipment, such as refrigerator and ventilated cars which are moved in fast freight service. The cost of handling such perishable traffic, taking into consideration initial and terminal service incident thereto, is greatly in excess of the average cost of handling other business on the line of the said railroad company. The accounting methods employed by the said railroad company do not, in allocating operating revenues to the State of North Carolina, make any adjustment or allowance for assembling, handling, loading, unloading and other terminal costs and charges incident to the handling of trans-state traffic. Consequently, this results in allocating to the State of North Carolina a net revenue which is in excess of that actually earned within that State.

(S.) H. W. MACKENZIE.

Subscribed and sworn to before me this 12th day of January, 1922.

(S.) J. M. DREWRY,
Notary Public.

My commission expires April 21st, 1923.

I hereby certify that this is a case in which, by the laws of Virginia, no tax is required upon the seal.

(S.) J. M. DREWRY,
Notary Public.

91 *Affidavit of George M. Phifer.*

Filed Jan. 24, 1922.

STATE OF NORTH CAROLINA,
County of Mecklenburg:

Affiant, George M. Phifer, says that he is, and has been, a resident of Mecklenburg County for 65 years; that he has made an examination of all deeds recorded in Mecklenburg County, N. C., from January 1st, 1921, to June 30th, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000.00), and also of the assessed value of the real estate embraced in said deeds for the year 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the consideration shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: From the amount of the Federal Tax imposed and entered on the record, viz: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100.00, and does not exceed $500.00, fifty cents, and for each additional $100.00 or fractional part thereof in excess of $500.00, fifty cents, and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $3,169,115.25, and that the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $1,815,279.50.

(Statements attached.)

(Signed.) GEO. M. PHIFER, *Affiant.*

S D 2

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Jan.	18	Jno B. Alexander &w.	F. B. Smith	3,000.00.	1,875.00
Jan.	10	HJ Anthony & wife	T. E. Sharp	2,350.00.	1,125.00
Jan.	28	CP Ausband & wife	Sam Wallace	4,100.00.	2,250.00
Jan.	27	SamuelM Asbery & w..	O. A. Neil	3,500.00.	2,365.00
Mar.	2	AM. Trust Co.	W. C. Curby & wife.	3,000.00.	5,000.00
Feb.	2	J. H. Autan	A. W. Ferguson	6,200.00.	2,347.50
Mar.	16	D. U. Abernethy	Alexander Copeland.	1,400.00.	600.00
Mar.	3	C.P.Ausband & wife	H. C. Sherrill	1,100.00.	900.00
Mar.	2	MO & JH Alexander	EL Barkley & wife	1,000.00.	525.00
Mar.	22	Minnie A. Alexander.	Micking Presbytery.	1,800.00.	750.00
Apr.	12	WS Alexander & wife.	W. Edgar Reid	2,000.00.	1,125.00
Apr.	6	Eustin & WS Alexander	J. S. DeVond	35,475.00.	11,250.00
Apr.	4	F.D. Alexander	Vienneta Nail	1,175.00.	750.00
Apr.	1	W. S. Alexander	W. B. Robinson	4,550.00.	2,700.00
Mar.	31	T. A. Adams	J. D. Short	3,500.00.	2,595.00
Apr.	29	T. A. Adams & wife	Pyramid Motor Co.	43,000.00.	38,856.25
Apr.	27	C.R.Austin & wife	Suburban Rlty Co	5,000.00.	2,475.00
Apr.	30	Annie L Alexander	C.A. McKinthan	3,200.00.	2,100.00
Jan.	18	Jno B Alexander & w.	F. B. Smith	3,000.00.	1,500.00
Jan.	8	Jno B.Brown & wife	M. B. Rose	1,000.00.	660.00
Jan.	8	Jno B.Brown & wife	M. B. Rose	1,000.00.	660.00

Jan.	3	.J. H. Breen & wife .	J & LE O'Donaghue .	2,500.00.	1,125.00
Apr.	8	.Jos C Payne & wife .	Hattie M. Eleem .	3,000.00.	1,875.00
Feb.	7	.J. H. Baker .	W. J. Howell .	1,000.00.	675.00
Feb.	2	.E.W.Bender & wife .	O. F. Theis .	20,000.00.	4,931.25
Feb.	2	.Jno B Brown & wife .	J. B. Frailey .	8,000.00.	4,057.50
Feb.	1	.A.D.Brown & wife .	W. P. Taylor .	2,100.00.	1,125.00
Jan.	29	.J.W.Bryant & wife .	H.M.Watson & wife .	2,000.00.	1,750.00
Jan.	27	.G.F.Bost & wife .	Maggy G.Blackinship.	4,500.00.	2,400.00
Jan.	21	.WL Burrough & wife .	E. C. Tesh .	1,500.00.	932.50
Mar.	8	.Paul B.Barringer &w.	Lee Kenney .	3,750.00.	2,250.00
Mar.	3	.Lilia M. Black .	W. R. Staple .	8,000.00.	2,456.25
Mar.	1	.H.M.Booth & wife .	E. C. Swink & wife.	5,400.00.	3,052.50
Mar.	1	.Charlotte Con'n Co..	Lula B. Vingham .	3,000.00.	1,500.00
Feb.	2	.Charlotte Con'n Co..	C. B. Bryant .	3,000.00.	1,721.25
Feb.	23	.Jessie May Bost .	Jno. C. Linden .	1,000.00.	675.00
Feb.	2	.W. M. Byrum .	Willie Rhymer .	3,400.00.	1,275.00
Feb.	21	.A.D.Banks & Mattie .	T. J. Millings .	1,000.00.	637.50
Mar.	16	.C. O. Brown & wife .	Myers Swortz .	1,750.00.	1,125.00
Mar.	16	.Jno C.Black & wife .	Ivery C. Ritch .	1,000.00.	712.50
Mar.	9	.Jas. Bracey .	Martin C. Propst .	1,500.00.	1,012.50
Mar.	29	.W.C.Brasington .	C. B. Alexander .	2,400.00.	1,125.00
Mar.	29	.C.O.Brown & wife .	Jas. P. Harris .	2,100.00.	1,350.00
Mar.	26	.T. R. Beam .	Brannon Vance .	1,500.00.	1,062.50
Mar.	26	.Mrs.MaggieBaumgaron.	W. J. Wright .	2,500.00.	1,537.50
Mar.	23	.Geo.H.Brockenboro .	Ada L.Brockenboro .	8,500.00.	2,760.00
Mar.	23	.Geo.H.Brockenboro .	H.C.Henderson .	10,000.00.	5,437.50
Mar.	21	.Geo.H.Billings,Jr. .	Geo.H.Billings,Sr..	2,000.00.	1,125.00
Mar.	21	lClaud Brown & wife .	E.H.France & wife .	1,500.00.	937.50
Mar.	21	.Lilly & WillisBrown.	W.C.Harris & wife .	2,500.00.	1,710.00
Mar.	21	.Alfred W Brown & w..	H.C.Ginley & wife .	1,200.00.	787.50

S D-7

S T A T E M E N T.

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 to 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Mar.	19	Geo.H.Billings & W.	Rosele T. Wade	25,000.00.	9,150.00
Mar.	9	Estice Brand	Annie J. Maxwell	1,000.00.	637.50
Mar.	19	Bilbro Mills	C.W.Eslan & Wife	3,000.00.	1,500.00
Apr.	12	D. J. Bost	W.G. Shoemaker	1,800.00.	1,500.00
Apr.	11	Charlotte Const. Co..	Geo. E. Buttner	3,500.00.	1,125.00
Apr.	4	I.W.Bingham & Wife	Ellen McCall	7,500.00.	4,830.00
Apr.	2	Daisy & J.L.Billinsy.	Isham A. Brown	10,000.00.	6,112.50
Apr.	1	Mytle & D.R.Beatty	J. M. Reid & Wife.	2,500.00.	1,406.25
Mar.	3	K. A. Bradshaw	T. C. Wilson	6,900.00.	3,367.50
Apr.	30	J. C. Bunday & Wife	Murray Watson	1,200.00.	750.00
Apr.	30	Bilbro Mills	L. O. Buttner	3,000.00.	1,687.50
Apr.	23	W.M.Blackwelder & W..	A.D.Bradford & W..	3,500.00.	2,175.00
Jan.	15	Charlotte Invest.Co..	Automatic Car Co..	10,500.00.	2,156.25
Jan.	15	Continental Mfg. Co..	R. C. Birmingham	10,000.00.	3,562.50
Jan.	6	H. M. Collins & Wife.	Saxby Chaplin	7,500.00.	3,375.00
Jan.	4	R. D. Craver	W. C. King	1,000.00.	637.50
Jan.	4	Chadwick-Hoskins Co..	City of Charlotte.	5,340.00.	3,150.00
Jan.	1	Charlotte Const.Co.	Mrs.Claudia S.Oates	10,500.00.	7,875.00
Feb.	14	F. O. Clarkson	J. L. Thomas	2,625.00.	1,050.00
Feb.	1	Fred.G.Coulter & W.	C. B. Gay	6,500.00.	3,225.00
Feb.	11	Charlotte Const.Co.	H. A. London	5,000.00.	2,250.00
Feb.	11	Carolina Company	M. B. Rose	1,000.00.	637.50
Jan.	26	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]	24	[illegible] Company	[illegible]	$ 500.00	1,125.00
Mar.	8	[illegible] Chambers	L. & F. Hardman	25,500.00	6,000.00
Feb.	18	Realty Company	C. Velour	1,200.00	750.00
Mar.	15	R.C.Carson & Wife	L. H. Lansus	1,250.00	562.50
Mar.	14	Continental Mfg. Co.	Lee Kenney	9,500.00	6,251.25
Mar.	14	Continental Mfg. Co.	F. F. Rinehardt	3,500.00	1,875.00
Mar.	14	Continental Mfg. Co.	W. E. Dodger	3,000.00	1,350.00
Mar.	29	Creig-Little RltyCo.	R. D. Jones	3,000.00	1,425.00
Mar.	26	Conrad Rlty. Co.	H. C. SherrillCo.	2,400.00	1,500.00
Mar.	24	C. M. Carson & Wife	Suburban Rlty.Co.	1,250.00	600.00
Mar.	25	J. M. Park & Wife	J. R. Coley	2,500.00	1,125.00
Mar.	23	Charlotte Company	Gastonia BrickCo.	1,900.00	750.00
Mar.	23	McAlister Carson &W	Hattie M. Elam	2,500.00	937.50
Mar.	1	Guss Cottis & Wife	W. F. Kilgo & W.	7,500.00	3,750.00
Mar.	17	Jas. T. Cannon	A. T. Mull	3,300.00	1,200.00
Apr.	16	J.C.& Chas. Autley	Barry M. Barnes	2,850.00	1,725.00
Apr.	14	Charlotte Company	Moses Walker	1,200.00	562.50
Apr.	12	Carolina Company	Maude Sams	1,000.00	750.00
Apr.	12	Charlotte Company	E. O. Bacom & W.	12,000.00	6,750.00
Apr.	1	C.M.Carson & Wife	Seril G. Swink	4,500.00	2,250.00
Apr.	1	Charlotte L.& R. Co.	L. G. Barry	1,500.00	1,012.50
Apr.	28	H. N. Carr	Myers Swortz	1,700.00	1,125.00
Apr.	25	Continental Mfg. Co.	J. C. Montgomery	1,500.00	1,162.50
Apr.	23	Continental Mfg. Co.	Elizabeth R.Hunter	4,000.00	2,062.50
Apr.	23	Charlotte Invest.Co.	Anna R. Smith	5,200.00	2,725.00
Apr.	23	Charlotte Invest.Co.	C. W. McMaken	2,000.00	1,125.00
Apr.	22	Continental Mfg. Co.	A. A. Warner &Co.	2,000.00	1,125.00
Apr.	4	H. M.Collins & Wife	T. E. Johnson	5,500.00	1,825.00
Apr.	20	M. W. Crocker &Wife	Lilliam L.Meakes	1,250.00	750.00
Apr.	30	Charlotte Const.Co.	Jennette M.Hendamon	7,000.00	4,108.75
Apr.	3	Charlotte Const.Co.	R. R. Faircloth	9,200.00	4,650.00
Jan.	13	S.W.Dandrege & Wife	A. D. Kencade	3,500.00	1,968.75
Jan.	6	Anna A. Dickson	Lila Auton	2,100.00	1,350.00
Jan.	3	C. M. Dunn & Wife	T. S. Bassett	2,500.00	1,350.00
			W. J. Chambers	3,500.00	2,745.00

page 93-

Mo.	Day				
----------		A. J. Draper & Wife.	Woman's Club	$50,000.00	$44,070.00
----------		Geo.F.Dunn & Wife	J. R. Dunn	5,000.00	1,350.00
Jan.	10	J. D. Hamby & Wife	S. H. Maness	1,500.00	822.50
Jan.	10	J. J. Harrill & W.	S. L. Dukcett	1,000.00	750.00
Jan.	7	J. M. Hatch	Lillian H. Hatch.	4,000.00	6,750.00
Jan.	4	J. H. Ham & Wife	J. D. Little	1,000.00	1,150.00
Jan.	3	Auto Hayes & Wife	Minnie V. Spratt.	7,750.00	3,000.00
Feb.	12	Home Real Estate Co.	M. W. Crocker	6,750.00	3,375.00
Feb.	2	Home Real Estate Co.	H. H. Gregg	3,500.00	2,340.00
Jan.	31	Home Real Estate Co.	Jas. W. Pharr	3,500.00	1,725.00
Jan.	27	J.J.Haliburton & W.	A. R. Surratt	2,500.00	1,672.50
Jan.	26	Miss Annie Hamby	S. H. McManess	3,500.00	1,376.25
Mar.	8	G. M. Hubbard & Wife)	H. B. Heath	1,600.00	1,200.00
Mar.	8	H. B. Heath	W. F. Kale	800.00	600.00
Mar.	7	J. M. House & Wife	Progressive Rlty-Co.	20,000.00	5,250.00
Feb.	25	W. R. Helms & Wife	J. A. Vita Jr.	2,500.00	1,800.00

Page 94-

	Jan.	3	.J	Breen & Wife	J & LE O'Donaghue	2,500.00	1,125.00
						25,500.00	6,000.00
Jan.	24	.	tte Company	.	L. & F. Hardman	1,200.00	750.00
Mar.	8	.	Chambers	.	C. Velour	1,250.00	562.50
Feb.	18	.	Realty Company	.	L. H. Lansus	9,500.00	6,251.25
Mar.	15	.	R.C.Carson & Wife	.	Lee Kenney	3,500.00	1,875.00
Mar.	14	.	Continental Mfg. Co..	.	F. F. Rinehardt	3,000.00	1,350.00
Mar.	14	.	Continental Mfg. Co..	.	W. E. Dodger	3,000.00	1,425.00
Mar.	14	.	Continental Mfg. Co..	.	R. D. Jones	2,400.00	1,500.00
Mar.	29	.	Creig-Little RltyCo..	.	H. C. SherrillCo..	1,250.00	600.00
Mar.	26	.	Conrad Rlty. Co.	.	Suburban Rlty.Co..	2,500.00	1,125.00
Mar.	24	.	C. M. Carson & Wife	.	J. R. Coley	1,900.00	750.00
Mar.	25	.	J. M. Park & Wife	.	Gastonia BrickCo..	2,500.00	937.50
Mar.	23	..	Charlotte Company	.	Hattie M. Elam	7,500.00	3,750.00
Mar.	23	.	McAlister Carson &W	.	W. F. Kilgo & W.	3,300.00	1,200.00
Mar.	1	.	Guss Cottis & Wife	.	A. T. Mull	2,850.00	1,725.00
Mar.	17	.	Jas. T. Cannon	.	Barry M. Barnes	1,200.00	562.50
Apr.	16	.	J.C.& Chas. Autley	.	Moses Walker	1,000.00	750.00
Apr.	14	.	Charlotte Company	.	Maude Sams	12,000.00	6,750.00
Apr.	12	.	Carolina Company	.	E. O. Bacom & W.	4,500.00	2,250.00
Apr.	12	.	Charlotte Company	.	Seril G. Swink	1,500.00	1,012.50
Apr.	1	.	C.M.Carson & Wife	.	I. G. Barry		

STATEMENT.

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	L 1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
----------		A. J. Draper & Wife.	Woman's Club	$50,000.00.	$44,070.00
----------		Geo.F.Dunn & Wife	J. R. Dunn	5,000.00.	1,350.00
Mar.	3	W. C. Dowd & Wife	NewsPublishingCo.	50,000.00.	45,000.00
Feb.	28	H. C. Deal	R. J. Davis	5,435.00.	3,900.00
Feb.	21	B. C. Davidson & W.	EndState Creo.Co.	3,000.00.	1,128.75
Mar.	16	E.H.Dunston & Wife	Dora B. Green	2,500.00.	1,500.00
Mar.	16	E.F.DeLaney & Wife	Fanny & Maude-Harrill	1,875.00.	1,087.50
Apr.	15	R. F. Dunn & Wife	T. L. Keizer	3,500.00.	1,350.00
Apr.	6	J. S. Deverty	E. B. Alexander	12,700.00.	7,800.00
Apr.	2	W.C.Dowd & Wife	Emely F.Pendleton.	7,600.00.	3,932.50
Apr.	18	Saxonay Mills	Annie W. King	35,000.00.	21,750.00
Jan.	13	S. W.Dandrege & W.	Lee Allen	2,100.00.	1,275.00
Feb.	14	M.L.& N.W.Evans	Mrs.MarieFasnaght.	3,850.00.	2,055.00
Jan.	24	Bessie J. Eatmon	J.F.Phillips & W.	3,500.00.	1,575.00
Jan.	20	J.S.Edward & Wife	Fower & Lee	3,000.00.	2,250.00
Mar.	4	Sarah A. Ellis	W.A.Siten & Wife.	2,700.00.	1,368.75
Feb.	26	W.H.Earnhardt &Wife.	J. C. Pressley	2,000.00.	1,825.00
Mar.	23	H.M.& C.H.Elam	Charlotte Company	6,000.00.	3,000.00
Jan.	29	E. C. Frank	J.L.Wiggins & W.	8,000.00.	4,950.00
Mar.	22	Guss Eromon & Wife	R. T. Pullman	3,000.00.	2,175.00
Feb.	2	J. L. Fullbright &W.	J. E. Collett &W.	3,600.00.	1,825.00
Mar.	9	Frederick DunlapCo	F. A. Owens	8,000.00.	5,400.00

Feb.	8	Chas. Gibson & W.	B. F. Wellings			
Jan.	24	Geo. W. Graham	Sue O.Alexander		17,700.00.	17,250.00
Mar.	7	Jno. H. Griffith	J.M.Wilson & W.		13,000.00.	6,618.75
Mar.	3	J. G. Carroway	C. W. White		3,500.00.	2,550.00
Mar.	16	D.B.& K. S. Grun	W. M. Mathews		4,400.00.	2,437.50
June	18	E. M. Griffin & W.	F. M. Hice		3,200.00.	1,327.50
Mar.	29	E. C. Griffith	Salvation Army		25,000.00.	9,625.00
Mar.	26	D. J. Guthrey & W.	W. A. Matheson		3,700.00.	2,250.00
Mar.	19	C. H. Gover	Eugene Morrison		35,200.00.	19,290.00
Apr.	11	R. C. Gresham	E. B. Gresham &W.		4,000.00.	2,812.50
Apr.	2	C. H. Gover	Blicken S. Scott.		15,751.00.	8,925.00
Apr.	25	C. W. Gallegher	Robinson Springs		5,500.00.	2,250.00
Apr.	23	W. W. Grier & Wife	Inez Eisman		2,000.00.	1,350.00
Jan.	10	J. D. Hamby & Wife	S. H. Maness		1,500.00.	622.50
Jan.	10	J. J. Harrill & W.	S. L. Dukcett		1,000.00.	750.00
Jan.	7	J. M. Hatch	Lillian H. Hatch.		4,000.00.	6,750.00
Jan.	4	J. H. Ham & Wife	J. D. Little		1,000.00.	1,150.00
Jan.	3	Auto Hayes & Wife	Minnie V. Spratt.		7,750.00.	3,000.00
Feb.	12	Home Real Estate Co.	M. W. Crocker		6,750.00.	3,375.00
Feb.	2	Home Real Estate Co.	H. H. Gregg		3,500.00.	2,340.00
Jan.	31	Home Real Estate Co.	Jas. W. Pharr		3,500.00.	1,725.00
Jan.	27	J.J.Haliburton & W..	A. R. Surratt		2,500.00.	1,672.50
Jan.	26	Miss Annie Hamby	S. H.-McManess		3,500.00.	1,376.25
Mar.	8	G. M. Hubbard & Wife)	H. B. Heath		1,600.00.	1,200.00
Mar.	8	H. B. Heath	W. F. Kale		800.00.	600.00
Mar.	7	J. M. House & Wife	Progressive Rly-Co..		20,000.00.	5,250.00
Feb.	25	W. R. Helms & Wife	J. A. Vita Jr.		2,500.00.	1,800.00

S T A T E M E N T .

DATE of CONVEYANCE	GRANTOR	GRANTEE	L 1-1-'21 6-30-'21	1921 ASSESSED VALUE
Jan. 7	J. C. King	L. J. Jones	[illegible]	[illegible]
Jan. 6	W. C.Kind & Wife	R. D. Craver	1,000.00.	450.00
Feb. 11	Ester Karmin	S.B.McGinn &Wife.	1,700.00.	600.00
Mar. 8	W. F. Kale	H. B. Heath	1,000.00.	495.00
Jan. 15	B.R.Lee & Wife	F. M. Simmons	6,250.00.	3,352.50
Feb. 15	A. & J. D. Love	H. F. Carter & W.	4,500.00.	1,987.50
Feb. 20	Ellen Lord	L. C. Burnes	2,500.00.	1,837.50
Mar. 11	C. E. Langford	Mrs. J.D.Kurner	7,700.00.	3,150.00
Mar. 10	C. B. Long & Wife.	Albert C. Joy	1,100.00.	750.00
Mar. 26	J. W. Lewis & W.	K. R. Trottor	10,000.00.	6,375.00
Mar. 24	Jno. P. Little &W.	McAlster Carson	9,150.00.	5,612.50
Mar. 22	Lakeside Land Co.	J. J. Harrill	12,000.00.	6,000.00
Mar. 18	Walter Lamberth&W.	Marion A. Mull.	20,000.00.	7,500.00

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Feb.	23.	H. L. Hungerford & Wife.	Mrs.Lue Mackey	$ 12,750.00.	$ 8,500.00
Feb.	23 .	H. F. Haun & Wife.	Mike Copas	5,000.00.	4,350.00
Mar.	14 .	H. B. Hurt	R. Sams	1,000.00.	600.00
Mar.	19 .	G. Hubbard & Wife.	Estrance Branch	1,000.00.	637.50
Mar.	16 .	H. B. Hurt	Carlele Carpenter	5,000.00.	1,500.00
Apr.	12 .	H. B. Hurt	Carolina Company.	5,500.00.	2,025.00
Apr.	11 .	Block W.Humphery	Lee Kenney	2,000.00.	1,380.00
Apr.	9 .	A. W. Howard	C. M. Miller	3,500.00.	1,500.00
Apr.	7 .	P. C. Harkey	A. M. Rea & Wife.	1,150.00.	375.00
Apr.	4 .	J. A.Henderson &W.	M. W. Crocker	4,500.00.	3,183.75
Apr.	22 .	J. A. Henderson	Home RealEstateCo.	3,000.00.	1,200.00
Apr.	22 .	Home RealEstateCo.	G. S. Harrill	2,350.00.	3,900.00
Apr.	30 .	Mtn.States InspCo.	Ella Hardman	20,000.00.	13,125.00
Jan.	15 .	Interstates ImpCo.	J. L. Norwood	1,000.00.	975.00
Feb.	11 .	Interstate Imp.Co.	J. A. Arthur	8,000.00.	5,100.00
Feb.	5 .	Int.CottonProd.Co.	H. L. Schosing	6,000.00.	2,100.00
Mar.	16 .	Erby C. Rush	J. C. Blake	2,500.00.	1,125.00
Apr.	29 .	Interstate Imp.Co.	J. & C.B.Purser	2,250.00.	1,425.00
Apr.	28 .	Interstate MotorCo.	T. H. Webb	37,000.00.	19,500.00
Feb.	14 .	Lester Johnson &W.	Jas. M. Harry	1,000.00.	900.00
Jan.	22 .	F.E.& R.E.Jennings	J. D. Love	3,300.00.	1,950.00
Feb.	28 .	Frank J.Jones & W.	W. D. Lylery	5,900.00.	3,150.00
Feb.	23 .	Frank J.Jones & W.	Geo. V.Gilbert	1,300.00.	1,350.00
Feb.	2 .	Frank F. Jones	C. G. Drumnight	1,250.00.	1,350.00
Feb.	21 .	Mary E. Jockson	J. W. Bryant	2,375.00.	1,200.00
Mar.	25 .	Albert C.Jay & W..	G. E. Morse	1,550.00.	1,125.00
Apr.	11 .	Amey James	W.Armstrong & W..	1,800.00.	967.50
Apr.	23 .	Sidney Justice &W.	J. T. Williams	2,600.00.	900.00
Feb.	2 .	Laura N. Kimberlan	Clyde B. Spratt	6,350.00.	2,361.25
Mar.	15 .	P. M. King	Murray C.Alexander	2,500.00.	1,350.00
Mar.	31 .	S. O. King	A. E. Williams	3,000.00.	1,575.00
Mar.	24 .	Lee Kenney & Wife.	F. R. McNinch	6,500.00.	2,700.00
Apr.	16 .	Lee Kenney & Wife.	Bub Still	1,200.00.	675.00
Apr.	15 .	Lee Kenney	Morris E.Trotter.	2,000.00.	1,125.00
Apr.	1 .	Lee Kenney	H. C. SherrillCo.	5,100.00.	2,437.50
Apr.	29 .	Lee Kenney & Wife.	R.L.Templeton &W.	1,100.00.	631.25
Apr.	20 .	W. W. King	Alice E.St.Clair.	4,300.00.	2,250.00
Apr.	18 .	W. R. Johnston	T. J. Davis	3,650.00.	2,212.50
Jan.	7 .	C. C. King	E. J. Fears	12,500.00.	8,100.00
Jan.	6 .	W. C.Kind & Wife	R. D. Craver	1,000.00.	450.00
Feb.	11..	Ester Karmin	S.B.McGinn &Wife.	1,700.00.	600.00
Mar.	8 .	W. F. Kale	H. B. Heath	1,000.00.	495.00
Jan.	15 .	B.R.Lee & Wife	F. M. Simmons	6,250.00.	3,352.50
Feb.	15 .	A. & J. D. Love	H. F. Carter & W.	4,500.00.	1,987.50
Feb.	20 .	Ellen Lord	L. C. Burnes	2,500.00.	1,837.50
Mar.	11 .	C. E. Langford	Mrs. J.D.Kurner	7,700.00.	3,150.00
Mar.	10 .	C. B. Long & Wife.	Albert C. Joy	1,100.00.	750.00
Mar.	26 .	J. W. Lewis & W.	K. R. Trottor	10,000.00.	6,375.00
Mar.	24 .	Jno. P. Little &W.	McAlster Carson	9,150.00.	5,612.50
Mar.	22 .	Lakeside Land Co..	J. J. Harrill	12,000.00.	6,000.00
Mar.	18 .	Walter Lamberth&W.	Marion A. Mull.	20,000.00.	7,500.00

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	L 1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Apr.	7.	J. P. Little & W..	C. E. Lambeth	$ 2,500.00	$ 1,500.00
Apr.	20.	B.A.Lingle & Wife.	L.S. Boyd	8,500.00	5,118.75
Apr.	30.	W. A. Lutz & Wife.	C. C. Mallard	4,000.00.	1,875.00
Apr.	26.	Thos. A. Little	Mrs. M. M. Little.	2,000.00	2,850.00
Apr.	19.	J. M. Linley & W	S. Q. Barnes	2,100.00	450.00
Jan	18.	Mecklenberg Farm	J. I. King & W	1,000.00	450.00
Jan.	29.	R. E. L.Wingfield&W.	W.B. Reid & W	7,000.00	3,405.00
Jan.	19.	Evelyn W. Mowery	Mrs. Julia C.Grier	7,000.00	4,447.50
Feb.	28.	W.E.Moffett & W.	G. G. Ray & Wife.	5,250.00	2,175.00
Feb.	26.	W. M. Matthews	Melvin C. Propst.	1,500.00	1,200.00
Feb.	16.	Chas. R. Morse	H. M. Williams	4,000.00	1,875.00
Mar.	12.	E. J. Mathews & W.	ProgressiveRltyCo.	1,000.00.	475.00
Mar.	11.	A.P.Mull & Wife	Walter&Chas. Lambeth	60,000.00	39,000.00
Mar.	26.	McCoy Morit & W.	K. A. Raeford	4,000.00	2,175.00
Apr.	16.	A. M. Mallonee	J.B.Hawkins & W..	2,000.00.	1,500.00
Apr.	30.	J.L.Martin & Wife.	R.L.Martin & Wife	1,300.00	750.00
Apr.	30.	R.T.Martin & Wife.	J.L.Martin&Wife	2,400.00	825.00
Apr.	22.	C. M. Miller & W	H.E.Ritchey &W.	2,850.00	1,987.50
Apr.	16.	HoyleMcBryan & W	B. H. William &W.	2,100.00	697.50
Jan.	12.	McClung Rlty Co.	L. L. Abernathy	2,500.00	2,612.50
Jan/	26.	V. J. McDaniel	B. N. Richburg	4,000.00	937.50
Jan.	24.	A. L. McIntosh	Robt.Walker& Wife	1,700.00	825.00
Feb.	23.	Nola S. McKenna	J.C.&T.A.Pressley	4,000.00	1,437.50
Mar.	25.	J.H. McLean	Geo. Stevens	2,600.00	1,500.00
Apr.	4.	E. & L.H.McCall	Jennie May Terry.	6,300.00	3,750.00
Apr.	30.	C.A.McKean & Wife.	AnnieLAlexander	1,300.00	810.00
Apr.	28.	J. H. McAden	ContinentalMfg.Co.	1,000.00	2,062.50
Apr.	28.	J.H.McAden	ContinentalMfg.Co	1,000.00	1,687.50
Apr.	28.	S. Y. McAden	ContinentalMfg.Co.	1,000.00	1,875.00
Apr.	28.	S. Y. McAden	ContinentalMfg.Co.	2,500.00	1,987.50
Apr.	28.	S. Y. McAden	ContinentalMfg.Co.	1,000.00	1,725.00
Jan.	13.	W.C.McNeley & W.	S. W. Dandrege	2,000.00	1,500.00
Jan.	6.	W.W.Newell & Wife.	J. D. Martin	8,000.00	4,691.25
Feb.	3.	R. H. Noblet & W..	A. A. McCall	4,500.00	2,137.50
Feb.	2.	N.CharlotteRltyCo.	V. P. Helms	1,000.00	637.50
Feb.	23.	D.B.Neil & Wife	V. M. Stine	10,500.00	6,375.00
Feb.	23.	J. C. Newell & W	W. L. & B.Money	1,500.00	1,443.75
Feb.	16.	W. L. Nichol & W	Edith D.Harrison.	1,600.00	1,125.00
Mar.	26.	J. C. Newell	W. T. Shoemaker	1,660.00	1,312.50
Mar.	5.	Jas. F.Crowley	C. M. Farris	1,500.00	937.50
Jan.	21.	E.M.Orr & Wife	S. L. Duckett	8,737.00	5,756.25
Feb.	23.	Oakhurst Land Co..	Erby C. Reid	2,000.00	1,125.00
Jan.	19.	ProgressiveRltyCo.	H.W.Covington	1,000.00	562.50
Feb.	19.	ProgressiveRltyCo.	R. C. Covington	1,000.00	562.50
Jan.	18.	ProgressiveRltyCo.	Rosie MPatillo	1,000.00	562.50
Jan	18.	Progressive RltyCo.	E.C.UBanks & Wife.	1,000.00	562.50
Jan.	18.	ProgressiveRltyCo.	Sue M.Collins	1,250.00	562.50
Jan.	18.	ProgressiveRltyCo.	Daniel Draddy	1,000.00	562.50
Jan.	11.	ProgressiveRltyCo.	Alfred W.Dischim	1,000.00	712.50
Jan.	11.	ProgressiveRltyCo.	S.I.Furr & Wife	1,000.00	712.50
Jan.	11.	Martin C. Propst&W	H.H.& J. M. James	2,000.00	1,200.00
Jan.	11.	Martin C. Propst&W.	D.W.& C. Wallace.	1,500.00	900.00

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 to 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Jan.	10.	ProgressiveRltyCo..	W.M.Seller & Wife	$ 1,300.00	$ 712.50
Jan.	10.	ProgressiveRltyCo..	B.H.Fry & Wife	1,400.00	562.50
Feb.	15.	ProgressiveRltyCo..	Earnest Goodman	1,250.00	562.50
Feb.	2.	ProgressiveRltyCo..	N. W. Moss	1,250.00	562.50
Feb.	16.	ProgressiveRltyCo..	R. B. Hood	1,250.00	562.50
Feb.	14.	H. M. Pharr	Minnie L. Evans	3,000.00	2,175.00
Feb.	12.	Martin C.Propst &W.	M. & B. Williams	2,000.00	900.00
Feb.	11.	ProgressiveRltyCo..	J. W. Wiggins & W.	1,500.00	900.00
Feb.	8.	ProgressiveRltyCo..	V. N. Reynolds & W..	4,750.00	3,562.50
Feb.	8.	ProgressiveRltyCo..	J. C. Lee	1,250.00	562.50
Feb.	4.	ProgressiveRltyCo..	W. M. Yandle	1,250.00	562.50
Feb.	4.	Progressive RltyCo.	V. J. Shoemaker	1,250.00	562.50
Feb.	4.	ProgressiveRltyCo..	L. McB. White	1,250.00	562.50
Feb.	4.	ProgressiveRltyCo..	---------	1,000.00	562.50
Feb.	4.	ProgressiveRltyCo..	N. S. Mathews	1,250.00	562.50
Feb.	4.	ProgressiveRltyCo..	W. A. Sechrist	1,250.00	562.50
Feb.	4.	ProgressiveRltyCo..	E. C. Frank	1,500.00	562.50
Feb.	3.	Progressive RltyCo.	P. W. Mathewson	1,250.00	562.50
Feb.	3.	ProgressiveRltyCo..	P. B. Tucker	1,250.00	750.00
Feb.	23.	ProgressiveRltyCo .	Ethel Smith	1,250.00	562.50
Jan.	31.	J. W? Pharr & Wife.	Home Real EstateCo..	3,500.00	2,340.00
Jan.	29.	ProgressiveRltyCo..	F. H. Waspun	1,250.00	562.50
Jan.	29.	ProgressiveRltyCo..	E. R. Smith	1,250.00	562.50
Jan.	29.	ProgressiveRltyCo..	W. A. House	1,250.00	562.50
Jan.	29.	ProgressiveRltyCo..	J. M. House	1,250.00	562.50
Jan.	29.	ProgressiveRltyCo..	H.BerkHolder & Wife.	1,000.00	562.50
Jan.	28.	ProgressiveRltyCo..	M. D. Brannon	1,000.00	562.50
Jan.	25.	ProgressiveRltyCo..	Alfred Dischenes	1,450.00	562.50
Jan.	25.	ProgressiveRltyCo..	E. A. Adams & Wife	1,500.00	562.50
Jan.	25.	ProgressiveRltyCo..	W. J. McCathey & W	1,250.00	562.50
Jan.	25.	ProgressiveRltyCo..	P. J. Mathews & W.	1,500.00	562.50
Jan.	25.	ProgressiveRltyCo..	R. W. Robinson	1,450.00	562.50
Jan.	24.	W. L. Pope	E. W. Bender	4,000.00	2,062.50
Jan.	19.	Parry Wright & W.	J. T. Williams	1,000.00	840.00
Mar.	7.	ProgressiveRltyCo..	E. R. Hood	2,750.00	1,500.00
Mar.	4.	ProgressiveRltyCo..	Minnie R. Endley	1,200.00	562.50
Mar.	1.	Martin Propst	R. H. Thuling & W	1,200.00	825.00
Feb.	23.	ProgressiveRltyCo...	C. S. Oakley	1,250.00	562.50
Feb.	23.	ProgressiveRltyCo..	J. C. Bomar	1,250.00	562.50
Feb.	23.	ProgressiveRltyCo..	F. E. Robinson	1,500.00	562.50
Feb.	23.	Jno. R. Pharr	A. M. Berryhill	6,000.00	4,172.75
Feb.	21.	Charlotte Const.Co.	W. L. Pierce & Wife.	5,250.00	2,250.00
Mar.	12.	ProgressiveRltyCo..	W. J. Squire & Wife.	1,500.00	562.50
Mar.	12.	ProgressiveRltyCo..	Carry M. Tagger t /	2,500.00	900.00
Mar.	10.	Martin C. Propst	E. C. Alexander	1,800.00	1,162.50
Mar.	10.	Martin C. Propst	R. A. Williams & W	2,000.00	1,050.00
Mar.	10.	Martin C. Propst	L andy Geogan	1,650.00	1,012.50
Mar.	24.	ProgressiveRltyCo..	M. S. Macks	2,500.00	900.00
Mar.	17	C. L. Pasing & Wife	Alex Copeland	6,000.00	3,600.00
Mar.	17.	ProgressiveRltyCo..	E. J. Mathews	1,500.00	900.00
Mar.	17.	ProgressiveRltyCo..	L. J. Crough	2,500.00	900.00
Mar.	16.	ProgressiveRltyCo..	Earl Elson & Wife	1,250.00	562.50
Mar.	16.	ProgressiveRltyCo..	J. B. Sidemore & W	2,500.00	900.00

STATEMENT.

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 to 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Mar.	16.	ProgressiveRlty Co.	W. A. Rogers	$ 3,750.00	$ 1,687.50
Mar.	15.	ProgressiveRlty Co.	H. S. Bryan	1,000.00.	562.50
Mar.	12.	C. B. Porter & Wife	Robt. E.Helms & W.	6,700.00.	3,562.50
Apr.	11.	Martin C. Propst	A. W. Brown & Wife.	1,000.00.	337.50
Apr.	4.	O. S. Parry	Blanch A. Smith	5,500.00.	3,375.00
Apr.	4.	ProgressiveRlty Co.	Paul M.Sherril & W.	4,000.00.	1,800.00
Apr.	4.	ProgressiveRlty Co.	F. E. Robinson	2,500.00.	900.00
Apr.	2.	Martin C. Propst	R. R. Dobson	1,125.00.	750.00
Apr.	2.	W. R. Phillips & Wife	Louise B. Wait	7,750.00.	4,125.00
Apr.	30.	ProgressiveRlty Co.	W. L. Shuping	2,500.00.	900.00
Apr.	30.	ProgressiveRlty Co,	E. A. Lawing	2,500.00.	900.00
Apr.	26.	Montrose D. Phifer	Martha C. Cooke	1,200.00.	900.00
Apr.	22.	Progressive Rlty Co..	J. H. Bobbitt	2,500.00.	900.00
Apr.	23.	C. B. Porter	S. R. Watkins	2,000.00.	1,125.00
Apr.	19.	S. V. Pitts & Wife	Charlotte Const.Co.	4,500.00.	3,000.00
Jan.	24.	M. C. Quinn	H. E. Deese & Wife.	1,000.00.	337.50
Feb.	1.	J. P. Quarels & Wife.	J. S. Sabistin	4,500.00.	3,000.00
Jan.	5.	C. H. Robinson & W...	W. H. Simpson	1,250.00.	705.00
Feb.	11.	M. B. Rose	The Carolina Co.	3,000.00.	1,395.00
Feb.	7.	J. S. Rust	J. S. McQuirter	2,000.00.	1,980.00
Feb.	1.	W. M. Russell & Wife.	S. E. Friday	3,320.00.	1,995.00
Jan.	26.	W. D. Rogers & Wife	Oakhurst Land Co.	1,500.00.	1,350.00
Jan.	26.	B. M. Richburg & W	E. J. McDaniel	18,500.00.	3,187.50
Mar.	1.	Drafds Renfrow & W.	John T. Smith & W..	4,750.00.	3,150.00
Feb.	26.	Mrs. E. M. Rogers	Eugenia Russell	2,800.00.	1,833.75
Feb.	26.	G. H. Brown & Wife	Erby C. Reid	1,000.00.	750.00
Feb.	2.	J. Russo	J. L. Fulbright &W.	4,150.00.	2,392.50
Mar.	9.	Royal Land Co.	Tom Dodd & Wife	2,000.00.	1,125.00
Mar.	17.	H. A. Rafield & Wife.	C. L. Parsons	4,000.00.	2,387.50
Mar.	17.	W. D. Rock & Wife	H. A. Quickel	1,700.00.	1,200.00
Mar.	16.	Rosemont Company	J. M. Mathews	3,000.00.	1,811.25
Mar.	16.	Rosemont Company	M. N. Wilson	2,500.00.	1,968.75
Mar.	16.	Rosemont Company	Lottie N. Reid	2,500.00.	1,968.75
Apr.	12.	M. B. Rose & Wife	R. E. Fann	1,750.00.	825.00
Apr.	8.	W. B. Roberts	Erby C. Reid	3,000.00.	2,655.00
Apr.	4.	F.E.Robinson & Wife	ProgressiveRlty Co.	1,450.00.	562.50
Apr.	29.	Erby C. Reid	Thomas Watkins	5,000.00.	3,307.50
Apr.	28.	Royal Land Co.	Henry Dorden	2,250.00.	1,125.00
Apr.	23.	Robinson Spring Co.	Jennis K. Spencer	6,750.00.	2,175.00
Jan.	18.	Suburban Rlty Co.	L. J. Thee	1,000.00.	600.00
Jan.	18.	Suburban Rlty Co.	Manny J. Mullis	1,500.00.	750.00
Jan.	18.	Simmons Const. Co.	Rush Lee	6,000.00.	3,352.50
Jan.	18.	Suburban Rlty Co.	Jas. W. Brown	1,000.00.	600.00
----------	.	W. S. Stancil & Wife.	E. M. Hannon	2,000.00.	1,350.00
Jan.	11.	Suburban Rlty Co.	Dressie May Bost	1,000.00.	600.00
Jan.	7.	W. W. Shoals & Wife	T. M. Starnes	7,500.00.	6,825.00
Jan.	8.	Madge W. & F.D.Smith.	Claudia H. Oates	16,000.00.	7,875.00
Jan.	8.	Stevens Company	E. Kimall	1,000.00.	937.50
Jan.	5.	J. M. Sammons & Wife.	M. B. Overcash	1,250.00.	750.00
Jan.	21.	Suburban Rlty Co.	T. E. Wingate	1,000.00.	600.00
Jan.	29.	Suburban Rlty Co.	R. A. Thomason & W.	3,000.00.	1,950.00
Jan.	19.	W. M. Simms	J. L. Kishbur & W	2,000.00.	1,200.00
Mar.	5.	K.D. & M. M. Schoult.	Paul M. Efird.	28,750.00.	13,500.00

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	L 1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Mar.	5.	V. M. Stein & Wife	F. A. Owen & Wife	$10,750.00	$ 2,375.00
Mar.	4.	Suburban Rlty Co.	Barbaria Atkins	1,000.00.	750.00
--------		Suburban Rlty Co.	J. C. Stokes	1,000.00.	750.00
Feb.	23.	I. W. Steward & Wife.	F. D. Lethco	12,000.00.	12,375.00
Feb.	21.	R. K. Swain & Wife	R. B. Williamson	4,000.00.	3,000.00
Mar.	15.	Suburban Rlty Co.	R. H. Lafferty	2,500.00.	1,350.00
Mar.	14.	J. D. Summerlin & W..	M. G. Hager	2.500.00.	2,205.00
Mar.	29.	Salvation Army	E. C. Griffith	9,000.00.	4,687.75
Mar.	29.	Addie R. Summers	Alida L. Oliver	1,200.00.	825.00
Mar.	28.	W. S. Stancil & Wife.	Alex Phifer	11,000.00.	3,375.00
Mar.	26.	R. W. Smith & Wife	W. P. Rierson	6,000.00.	1,312.50
Mar.	25.	Geo. Stevens & Wife	J. L. McClintock	2,750.00.	1,575.00
Mar.	21.	W. R. Staples & Wife.	V. B. Higgins	2,800.00.	5.575.00
Mar.	16.	Stevens Company	Myers Park Co.	1,750.00.	1,500.00
Mar.	16.	Stevens Company	Myers Park Co.	1,750.00.	1,125.00
Apr.	6.	V. L. Studebaker &W	E. C. Griffith	3,500.00.	2,512.50
Apr.	2.	Suburban Rlty Co.	J. D. Kluttz	6,000.00.	3,375.00
Apr.	1.	Myers Schwartz & W.	Charlotte Loan Co.	1,700.00.	1,125.00
Mar.	31.	J. D. Short & Wife	Tucker & Laxton	3,800.00.	2,595.00
Mar.	31.	Suburban Rlty Co.	Southern EngringCo.	2,500.00.	1,200.00
Apr.	29.	Suburban Rlty Co.	L. J. Kee	1,000.00.	637.50
Apr.	29.	Suburban Rlty Co.	C. R. Austin	1,800.00.	750.00
Apr.	22.	W. M. Smith Co.	M. V. Hawkins	2,300.00.	1,275.00
Apr.	23.	H. C. Sherrill Co.	W. S. Cunningham	3,400.00.	1,500.00
Apr.	23.	J. L. Spencer & Wife.	E. S. DeLaney	2,000.00.	1,980.00
Apr.	22.	F. M. Summers & Wife.	Lucy W. Lyder	4,000.00.	3,375.00
Apr.	19.	A. E. Spears & Wife	Arthur J. Moore	2,000.00.	1,627.50
Apr.	19.	Benjiman Smith & W.	O. J. Thies	8,500.00.	1,665.00
Apr.	19.	Stevens Company	F. E. & C. H. Era	1,500.00.	1,275.00
Apr.	16.	Jas. B. Sing	H. M. Wade	3,250.00.	1,675.00
Jan.	15.	Thies-Smith Rlty.Co..	Mrs. Ella Ward	2,400.00.	1,740.00
Jan.	14.	Floyd C. Todd	R. G. Campbell & W.	1,000.00.	562.50
Jan.	27.	A. G. Trottor & Wife.	The Charlotte Co.	10,000.00.	6,000.00
Jan.	25.	O. J. Thies & Wife	Bostic Candy Co.	4,000.00.	2,400.00
Jan.	22.	O. J. Thies & Wife	Bostic Candy Co.	5,000.00.	3,000.00
Jan.	22.	Alice & W. M. Taft	Ellenor Simmons	17,000.00.	11,250.00
Jan.	21.	W. V. Thoms & Wife	John P. Kennedy	8,500.00.	3,750.00
Feb.	28.	Ira B. Turner & Wife.	P. J. Maulins	3,500.00.	2,250.00
Feb.	9.	I. D. L. Turner	Will Howser	1,500.00.	900.00
Mar.	15.	M. C. Tucker & Wife	J. R. Thomas & Wife	3,250.00.	937.50
Mar.	31.	Turner Land Co.	Ritch K. Epps	3,700.00.	2,025.00
Apr.	12.	T. J. Turbyfield	R. S. Gorman & W	3,250.00.	2,475.00
Apr.	11.	Turner Land Co.	J. L. Belk	2,175.00.	2,400.00
Apr.	26.	R. N. Tucker & Wife	City Realty Co.	2,500.00.	1,125.00
Apr.	22.	C. D. Talliaferro	G. W. Stegal	1,750.00.	1,012.50
Apr.	22.	O. F. Theis & Wife	J. L. Kurans	2,500.00.	1.687.50
Apr.	30.	S. B. Tanner & Wife	J. D. & N. W. Woodside.	8,000.00.	3,330.00
Mar.	1.	United Rlty Co.	Martin Propst	2,400.00.	1,500.00
Feb.	5.	J. A.Vity & Wife	W. C. Pressley & W,	2,700.00.	1,800.00
Jan.	12.	Mrs. Emmy G.Vreeland.	W. Davis & Wife	1,100.00.	675.00
Jan.	26.	Aberham White	W. Lewis & Wife	2,000.00.	1,125.00

DATE of CONVEYANCE Mo.	Day.	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Jan.	24.	E. L. Wilson & Wife	S. W. Edwins & W.	$ 4.719.00	$ 2.636.25
Jan.	22.	Geo. E. Wilson	Joe B. Efird	12,500.00	11,775.00
Jan.	19.	S.Wittkossky Estate	S. & A. White	40,000.00	37,500.00
Mar.	2.	H. R. Walden & Wife	J. M. Saunders & W.	2,500.00	1,627.50
Mar.	2.	Charlotte Const. Co.	J. L. Widdit	4,000.00	2,906.25
Mar.	3.	Charlotte Const. Co	J. P. Wiggins & W	4,500.00	3,661.25
Feb.	24.	D. H. Ward & Wife	W. H. & P. S. Maudy	2,200.00	1,462.50
Feb.	18.	L. J. & J.R.Wentz	The Charlotte Co.	3,200.00	1,500.00
Apr.	5.	J. W. Whitlow & Wife.	B. W. Whitlow	1,000.00	2,437.50
Apr.	4.	T. C. Wilson	H. C. Henderson	16,000.00	9,868.25
Apr.	1.	J. H. & W. R. Wearn	J..L. Greigory	1,500.00	750.00
Apr.	1.	Sam Wallas	D. Karros	5,000.00	2,250.00
Apr.	1.	John White	W. M. Roseboro	1,200.00	637.50
Apr.	16.	J. L. Wingate & Wife.	Nanny H. Padgett	2,600.00	1,612.50
Apr.	18.	T. E. Wingate & Wife.	Suburban Rlty Co.	3,000.00	1,740.00
Jan.	18.	Geo. E. Wilson	F. M. Simmons	3,500.00	2,907.00
Jan.	13.	A. J. Williams & W	Minnie E. Miller	1,500.00	1,035.00
Jan.	4.	L. H. Wills & Wife	J. L. Holly	2,800.00	981.25
Jan.	4.	W. E. White & wife	Irvin D. Kimball	7,300.00	3,468.75
Feb.	7.	K. E. Ward	J. B. Wilkie	5,000.00	4,375.00
Feb.	3.	E. M. Williams	Steve Pappas	5,500.00	3,000.00
Feb.	2.	J. A. White & Wife	E. L. Gardner	1,200.00	750.00
May	30.	J. W. Austin & Wife	Lee Kenney	1,100.00	450.00
May	21.	T. A. Adams	A. C. Fite	9,000.00	7,875.00
Jan.	3.	J. A. Austin & Wife	Suburban Rlty. Co.	1,100.00	750.00
June	9.	C. P. Ausbin	H. C. Sherrill	1,100.00	900.00
June	11.	T. T. Allison & Wife.	Margaret H. Howard.	10,000.00	5,250.00
June	18.	W. S. Alexander & W	M. Sams	1,000.00	371.25
June	18.	Bessie N. Allison	T. E. Elliott	3,000.00	2,700.00
June	20.	Victor R. Allison	J. E. Brantley &W	3,500.00	2,171.25
May	20.	Jas. Bracy	J. B. Groom & wife.	2,000.00	10,012.50
May	31.	J. F. Brown & wife	Int. Imp. Co.	1,000.00	600.00
May	28.	W. F. Beam	J. L. Lyles & wife.	12,500.00	7,125.00
May	25.	J. F. Boyd & Wife	----------	3,000.00	1,238.50
May	24.	Jno. S. Blake	Fred D. Austin	17,500.00	9,450.00
May	23.	A. B. & C. M. Bolton.	Lewis B. Vreeland	1,700.00	1,800.00
May	25.	Rays.J. Byers & Wife.	Henry J. Douglass	1,800.00	1,125.00
May	12.	R. C. Robertson & W	W. M. Simpson & W	3,000.00	1,837.50
May	18.	S. Q. Barnes	E. L. Yandle	2,800.00	1,350.00
May	9.	Jno. F. Blythe & W	Lee Kenney	1,200.00	1,125.00
June	24.	A. W. Brown & Wife	H. A.Haas	3,500.00	1,875.00
June	27.	S. Q. Barnes & Wife	J. B. Bassett	3,500.00	2,058.50
June	29.	J. A.Baldwin & Wife	Mrs. V. C. Jones	1,500.00	937.50
May	20.	Elks Home Company	Home Real Esate Co.	30,500.00	26,125.00
May	26.	Edwin Crowley & Wife.	B. F. Williams	7,500.00	2,625.00
May	24.	L. C. Cook & Wife	Oakhurst Lumber Co.	1,000.00	675.00
May	23.	E. T. Cochran & Wife.	J. L. Hart	1,000.00	637.50
May	16.	F. O. Clarkson	J. R. Davis	1,825.00	1,260.00
June	1.	W. R. Cox	Mrs. J. L. Pickard.	7,500.00	4,038.50
May	24.	R. L. Gibbon	R. D. Craver	1,700.00	1,150.00
May	14.	Crator Charlotte Co	H. L. Taylor	1,000.00	600.00
May	3.	J. C. Goodman & Wife.	Henry Dockery	2,900.00	1,500.00
June	1.	E. W. Gurley & Wife	Mrs. M. A.Thomas	1,250.00	750.00

DATE OF CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
June	18.	Geo. H. Groover & W	E. W. Bender	1,000.00	375.00
June	30.	R. L. Gibbon & Wife	P. H. Efird & Wife	3,500.00	2,225.00
May	30.	L. W. Helms & Wife	W. A. Matheson	1,850.00	825.00
May	27.	E. & C. D. Husman	J. D. Elliott	16,500.00	6,663.75
May	27.	Kate W. Hall	C. W. Gallagher	5,000.00	2,392.50
May	25.	J. F. Ham & Wife	J. W. Barber	2,000.00	1,275.00
May	24.	R. N. Hood & Wife	L. C. Cook & Wife	4,500.00	1,500.00
June	6.	A. H. Crowell	B. D. Heath Jr.	3,000.00	2,085.00
June	4.	The Charlotte Co.	F. M. King & Wife	1,450.00	1,012.50
June	3.	The Charlotte Co.	Paul W. Mathewson	7,000.00	3,000.00
June	7.	K. R. Cherry	J. F. Elliott	1,750.00	925.00
June	15.	John S. Clifford &W	Lee J. Smith	8,500.00	3,152.50
June	15.	Charlotte Const. Co..	A. J. Garrison	4,000.00	2,250.00
June	16.	Saxby Chapman & Wife.	F. M. Davis & Wife	6,000.00	3,375.00
June	16.	Charlotte Const. Co..	B. L. Suggs	4,000.00	2,250.00
June	16.	Charlotte Const. Co..	J. A. C. Woodward	4,500.00	2,625.00
June	20.	R. D. Craver & Wife	Mrs. Sarah S. King	2,500.00	2,643.75
June	22.	Continental Secu.Co..	A. D. Watts	1,000.00	600.00
June	24.	Charlotte Const.Co.	A. T. Allan & Wife	9,500.00	3,750.00
June	24.	Charlotte Const. Co..	W. E. Parker	7,800.00	4,125.00
May	20.	R. M. Dunnavant	C. F. Katto	4,750.00	1,826.25
May	14.	J. R. Davis & Wife	A. M. Mallonee	2,150.00	986.25
Jan.	6.	R. R. Dodson	W. H. Webster	1,000.00	637.50
June	28.	D. W. & J.A.Durham	Aberm White	1,500.00	937.50
May	24.	C. R. Edwards & Wife.	Continental Mfg. Co..	6,700.00	4,487.50
May	10.	E. H. France & Wife	F. A. Culp & Wife	11,000.00	6,525.00
May	5.	Frank E.Furgeson & W.	W. W. Davis	5,500.00	2,913.75
June	9.	W. D. Fesperman	Martin C. Propst	1,000.00	900.00
June	15.	Earney L. Fite	W. L. Small & Wife	4,500.00	2,437.50
May	23.	J. M. Howard & Wife	H. W. Cobington	1,000.00	900.00
May	17.	T. E. Cumby & Wife	Walter M. Lambeth	20,000.00	9,375.00
May	18.	W. P. Harkey & Wife	S. M. Hart	10,650.00	5,445.00
May	19.	W. F. Harding	Suburban Rlty Co.	1,150.00	600.00
May	3.	W.B.Harrington & Wife	Mrs. M. B. Davis	8,750.00	4,627.50
May	7.	R.S.Hutchinson & W.	Chas. C. Hutchinson	2,000.00	8,002.50
May	9.	H. B. Heath	A. W. Alexander	1,500.00	495.00
June	6.	D. J. Hamby & Wife	Mary R. Todd	10,500.00	5,250.00
June	8.	Home Real Estate Co	Elliott T. Perkins	3,700.00	2,100.00
June	1.	L. J. Howard & Wife	Thos. T. Allison	2,000.00	1,500.00
June	28.	T. E. Hamby & Wife	The Steven Co.	1,500.00	1,125.00
June	2.	J. B. Ivey & Wife	J. L. Taylor	1,600.00	1,125.00
May	2.	Edwin E. Jones & Wife	Myers Park Home Co.	8,000.00	3,212.50
June	9.	C. S. Jarrett & Wife.	G. S. Champion & W	2,000.00	1,556.25
May	31.	W. A. Killiam & Wife.	J. F. Brown	1,000.00	600.00
May	27.	J. L. & G.C.Kirkman	Stough Miller & W	3,500.00	1,725.00
May	25.	G. C. Kimball & Wife.	R. L. Fox & Wife	1,000.00	356.25
May	25.	J. C. Kale & Wife	F. L. Austin & Wife	1,400.00	675.00
May	7.	Annie W. King	S. C. Rogers	3,750.00	1,500.00
June	10.	Thos. F. Kerr & Wife.	W. C. Thomas	2,650.00	945.00
June	9.	L. Arenson	H. C. Sherrill & Co..	1,000.00	371.25
June	18	B. Rush Lee & Wife	W. J. Chambers	3,500.00	2,955.00

STATEMENT.

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	L 1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
May	19.	Marion McDaniel	D. L. Sing	3,000.00	1,905.00
May	14.	Bessie McQuirter	Margaret J. Julian.	2,000.00	991.00
May	2.	J. H. McLean	George Stevens	2,300.00	1,500.00
May	4.	McClung Realty Co.	J. O. Williams &W	1,800.00	1,050.00
May	7.	J. L. McClinton & W	H. B. Heath	1,000.00	375.00
June	7.	Rosie McClure	J. E. Wilson	1,600.00	1,132.50
Jan.	9.	W. T. McLeod & Wife	J. W. Fox & Wife	2,600.00	1,575.00
May	2.	J. H. McLean	George Stevens	2,300.00	1,575.00
May	2.	Myers Park Company	Agnes G. Dowd	8,000.00	4,312.50
May	5.	Chas. H. Miller	C. J. Montford & W.	6,000.00	3,750.00
May	5.	Dolly J. Meacham	Mable M. Calvint	11,000.00	5,610.00
May	20.	P. B. Munday & Wife	Helen B. Carroway	4,000.00	1,591.25
May	20.	W. T. Martin	Oscar Belk	3,250.00	1,800.00
May	23.	Cecil B. Maxwell	L. B. Vreeland	1,800.00	1,125.00
May	27.	Julia E. Morris	R. M. Gallant	10,500.00	6,375.00
--------		A. & J. H. Mayer	Queen City Rlty Co.	1,000.00	637.50
--------		Miss Bertha Morris	R. M. Gallant	3,000.00	1,312.50
June	3.	P. W. Matheson	Lee D. Hall	4,500.00	675.00
June	7.	Mecklenberg Farm	G. T. Graham	3,650.00	2,250.00
January	10.	H. A. Mullis & Wife	Raymond Holbrook	2,300.00	1,575.00
June	16.	Myers Park Co.	Anna P. Sigman	17,000.00	1,500.00
June	16.	Myers Home Co.	Myers Home Co.	2,630.00	1,500.00
June	21.	Cameron Morrison	J. O. Walker	14,500.00	8,645.00
June	1.	N. Charlotte Rlty Co.	S. A. Mangum	10,000.00	562.50
June	8.	Joseph Nosser	Miss Appie Fogle	4,200.00	2,966.25
May	9.	C. S. Oakley & Wife	Progressive RltyCo.	3,500.00	6,000.00
May	28.	Progressive Rlty Co.	E. F. Rimmer & Wife	2,500.00	1,500.00
May	25.	M. C. Propst & Wife	M. V. Hawkins	2,000.00	2,013.75
May	23.	M. D. Phifer	D. C. Whitaker &W.	1,500.00	750.00
May	11.	A. Foster Phifer	W. S. Stancel	5,000.00	2,200.00
May	16.	O. S. Parry	V. J. Carlington &W	1,650.00	675.00
May	16.	Raymond T. Pullman	Guss Akerman	2,700.00	1,175.00
May	7.	Progressive Rlty Co.	The Charlotte Co.	1,000.00	750.00
May	12.	Shuford Peeler & Wife.	W. J. Scott & Wife.	1,400.00	808.50
June	1.	Progressive Rlty Co.	Alice K. Chapin	4,500.00	225.00
June	13.	J. C. Pressley & W	J. W. Bemmick	5,000.00	2,250.00
June	18.	J. C. Pressley & W	M. F. Burt	1,500.00	1,875.00
June	16.	Queens Home Co.	J. A. Yarborough	14,500.00	7,761.25
May	23.	E. N. & Claude Reese.	Anna H. Hickson	4,500.00	3,375.00
June	3.	L. B. Rogers	D. H. Rogers	1,800.00	1,792.50
June	13.	R. W. Roberts	Lee Kenney	2,000.00	562.50
June	14.	Rosemont Company	T. J. Davis	2,750.00	1,500.00
June	14.	Rosemont Company	T. J. Davis	2,760.00	1,500.00
June	14.	Rosemont Company	T. J. Davis	2,960.00	1,500.00
June	14.	Rosemont Company	T. J. Davis	2,760.00	1,500.00
June	14.	Rosemont Company	T. J. Davis	2,760.00	1,500.00
June	15.	Royal Land Company	King Willis & Wife.	2,000.00	1,125.00
June	16.	Rosemont Company	Cal G. Cooke	2,000.00	1,125.00
June	28.	Rosemont Company	D. J. Hunter	2,500.00	1,500.00
June	28.	M. B. Rose	Carry L. McLean	1,900.00	1,125.00
May	31.	Maude R. Sams	Caldwell TredwickCo	1,000.00	375.00
May	30.	T. B. Smith & wife	C. L. Mason	2,150.00	825.00
May	28.	Myers Schwartz	Queen City Rlty Co.	1,725.00	1,125.00
May	27.	H. J. Spencer & Wife.	R. H. Lafferty	2,000.00	1,256.25

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day.	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
May	27.	Suburban Rlty Co.	J. V. Conn	5,000.00	1,650.00
May	25.	Suburban Rlty Co.	W. E. Crowder	1,000.00	750.00
May	24.	Mary C. Smith	O. J. Thies	2,500.00	1,556.25
May	24.	W. M. Smith	Jno. Frazier	1,700.00	825.00
May	23.	Stevens Company	Fannie E. Hinsely	2,000.00	1,500.00
May	19.	J. C. Stancel	H. & P. Vreeland	2,500.00	1,875.00
May	13.	Stevens Company	E. G. Wilson	1,600.00	900.00
May	15.	Iseral Schwartz & W	M. J. O'Neil	5,500.00	2,100.00
May	16.	Suburban Rlty Co.	J. C. Harris	1,000.00	750.00
May	18.	W. A. Hevner & Wife	J. W. Sultan & Wife.	5,000.00	2,475.00
May	18.	Stevens Company	Edna A. Houseman	3,500.00	1,875.00
May	7.	H. C. Sherrill Co.	Mathew Carose	5,800.00	1,676.25
May	9.	Suburban Rlty Co.	C. T. Barrier & Wife	1,000.00	540.00
May	13.	Susie Spector	Sam Levy	3,200.00	1,886.25
June	2.	H. C. Sherrill Co.	P. R. Yancey	5,500.00	525.00
June	4.	C. F. Shuman & Wife	F. P. Crowley	5,750.00	375.00
June	7.	Susie Spector	P. Katzan	5,700.00	2,625.00
June	9.	Stevens Company	C. A. Scott	1,500.00	600.00
June	16.	Stevens Company	Estell Kelly	1,500.00	660.00
June	15.	Geo. Stevens & Wife	E. J. Kestler	3,000.00	1,875.00
June	21.	J. W. Stinson & Wife.	Mrs. Jennie C. Bell.	9,000.00	4,875.00
June	22.	Stevens Company	Home Real Estate Co.	1,500.00	937.50
Juhe	22.	Stevens Company	Home Real Estate Co.	1,500.00	937.50
June	22.	Jno. T. Smith & Wife.	Queen City Rlty Co..	1,500.00	1,125.00
June	28.	Stevens Company	T. E. Hensley	3,250.00	2,250.00
June	28.	Suburban Rlty Co.	Stevens Company	3,500.00	2,250.00
June	18.	Stevens Company	T. E. Hensley	2,500.00	1,125.00
June	30.	Robert J. Small & W..	W. J. Walls	5,200.00	1,991.25
May	5.	Farm Land Company	Annie L. Taylor	4,650.00	487.50
May	6.	J. E. Thomas & Wife	Thomasboro Co.	1,000.00	675.00
May	14.	Advent Church	Mrs. C. J. McCarver.	1,350.00	675.00
May	14.	Farm Land Company	S. B. Alexander Jr..	3,000.00	862.50
May	23.	Traders Land Co.	W. J. Brown	16,000.00	8,310.00
May	26.	W. H. Twittie	Oakhurst Land Co.	2,000.00	882.00
-------		C. W. Teeter & Wife	O. W. Lawing	3,000.00	1,875.00
June	17.	A. T. Thomas	Frank B. McGinn	2,500.00	1,687.50
June	21.	O. J. Thies & Wife	Security Invest.Co..	17,500.00	10,450.00
June	22.	J. L. Taylor & Wife	Jno. T. Swink	1,500.00	1,125.00
June	28.	Farm Land Co.	Jno. W. Creig & W	2,900.00	487.50
May	23.	United Rlty Co.	Lee Kenney	1,500.00	825.00
May	9.	J. A. &W.E.Walwick	Florence I. Little	5,000.00	2,725.00
May	11.	J. W. Wolf & Wife	J. H. Thorp	1,500.00	563.50
May	11.	E. G. Wilson & Wife	Suburban Rlty Co.	3,500.00	1,125.00
May	18.	Oscar White & Wife	J. R. Hemphill	2,000.00	1,086.25
May	18.	W. C. Whitmire & W.	D. W. Austin	1,000.00	495.00
May	23.	Ethel W. Winters	J. M. Turner & Wife.	5,250.00	2,887.50
June	2.	J. K. Wolf & Wife	J. E. Shaffner & W..	2,500.00	825.00
June	2.	J. K. Wolf & Wife	Della Vattio	2,100.00	618.75
June	3.	M. E. Walker & Wife	A. D. Neil	3,000.00	750.00
June	4.	R. B. Williamson	C. F. Shuman	1,500.00	600.00
June	7.	C. W. Wise	J. D. Short	8,000.00	4,462.50
June	8.	W. H. Wood & Wife	C. T. Stroupe & Wife	2,500.00	1,682.50
June	17.	J. K. Wolf & Wife	H. A. Lawing	3,486.00	1,237.50
June	17.	A. & J. W. White	Harry Washington &W.	1,000.00	750.00

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day.	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
June	25.	Elizabeth L. Wilson.	J. C. Harley & Wife.	8,000.00	3,562.50
June	28.	Aberm White	Bertie E. Horton	1,750.00	900.00
May	16.	V. J. Yelvington	Q. S. Parry	5,900.00	2,250.00
May	18.	E. L. Yandle	S. Q. Barnes	3,000.00	1,856.25
Jan.	24.	Hustin Frazier	C. L. Hurdle	2,300.00	53.00
Jan.	19.	J. W. Hayes & Wife	W. H. Haun	1,600.00	3,000.00
Jan.	15.	Wallace Johnston & W.	W. M. Brawley	108.50	795.00
Jan.	10.	J. E. Narkit & W.	G. W. Kale & Wife	1,500.00	1,392.00
Jan.	3.	Dewhit Barley & W.	Graham C. Taylor	1,472.00	874.50
Mar.	23.	T. E. Cochran	J. A. Wilson	2,250.00	206.25
Apr.	5.	J. B. McLauflin &W	R.L.& S.J.Biggers	5,962.50	3,140.25
Jan.	6.	W. S. Parker & W.	M. L. Archer	2,300.00	1,125.00
Feb.	7.	Louise W. Sloan	H. & Annie Martin	1,000.00	525.00
Mar.	1.	S. O. Torrence	P. K. Goodman	1,200.00	525.00
Mar.	7.	Dilling Cotton Mills.	Dilling Linden Co.	41,500.00	14,208.75
Mar.	7.	Linden Mfg. Co.	Dilling Linden Co.	41,500.00	11,975.75
Mar.	9/	L. G. Caldwell & W	S. H. Washum	1,550.00	1,602.75
Apr.	4.	M. C. Johnston	J. R. Nantz	2,000.00	1,822.50
Apr.	22.	Archibal Currie	L. B. Long	2,250.00	1,890.00
Apr.	22.	R. M. Armon Heirs	L. B. Long	7,500.00	1,687.50
Apr.	22.	M. L. Thompson	L. B. Long	3,447.50	2,917.50
June	11.	J. Hope Adams	Mrs. L.E.Johnson	1,000.00	600.00
June	11.	Sawers Estate	Lillie E. Sawers	1,000.00	375.00
Feb.	2.	Julia E. Bradford	J. W. Auton, Jr.	1,600.00	1,200.00
Mar.	2.	S. L. Mullin & Wife.	Bankof Huntersville.	1,250.00	750.00
Mar.	24.	Mrs. M. E. Hunter	Alley Starnes	1,070.25	461.25
Mar.	24.	Mrs. M. E. Hunter	Minnie E. Hunter	2,500.00	900.00
June	7.	N. C. Frazier & W.	K. W. Fite & Wife	2,500.00	1,500.00
June	2..	M. T. & T. J.Brdman. (Brackman)	Anchor Mills	1,800.00	1,125.00
June	20.	J. L. Slaton	Lewis Long	1,400.00	525.00
Jan.	18.	J. D. McCall	W. D. Cox	2,907.00	1,987.50
Jan/	29.	Mrs. Edna Baker	J. C. Mooney	1,200.00	1,669.75
Feb.	7.	T. L. Sellers & Wife.	Plummer Stewart	1,550.00	1,550.00
Feb.	14.	Mrs. S. E. Beam	W. A. Cathey	3,000.00	1,500.00
Mar.	16.	J. E. Dunn & Wife	W. F. Smith	2,250.00	4,387.50
Mar.	17.	M. A. Fetherston	W. T. Robinson	3,300.00	1,326.75
Mar.	19.	R. W. Elliott & W	E. H. Holler	1,500.00	874.50
Apr.	23.	E. O. Isenhour	E. P. Isenhour	2,500.00	238.50
Jan.	10.	E. T. Bost	H. A. Smith	8,690.00	3,725.25
Feb.	15.	Aldie House	Catawba Mfg. Co.	2,500.00	2,625.00
Feb.	23 .	J. W. Alexander	Oakhill Stock Farm.	4,395.00	1,548.75
Feb.	1.	J. N. Abernathy	A. F. Fowler	4,500.00	4,297.50
Feb.	1.	C. F. Fowler & Wife.	H. L. Bradford	4,500.00	4,297.50
Feb.	1.	R. L. Stevens & Wife.	Catawba Mfg. Co.	5,000.00	3,281.25
Feb.	1.	Catawba Mfg. Co.	R. L. Stevenson	7,000.00	5,040.00
Mar.	2.	J. R. Hutchinson &W.	Bryce O. Torrence	2,300.00	1,207.50
------	.	J. F. Gamble & Wife.	W. L. Gamble	5,000.00	6,633.75
Apr.	2.	R. M. Kidd & Wife	Richard Stillwell	4,000.00	1,050.00
Apr.	30 .	Citizens L. & T.Co..	P. B. Mundy	3,000.00	1,601.25
May	20.	P. B. Mundy & Wife	Helen B. Carroway	4,000.00	1,601.25
------	.	J. M. Elliott	Catawba Mfg. Co.	2,000.00	1,181.25
Jan.	3.	W. B. Parks & Wife	Catawba Mfg. Co.	7,000.00	2,362.75

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Jan.	3.	W. B.Parks & Wife	Catawba Mfg. Co.	4,500.00	1,383.75
Jan.	3.	W. B. Parks & Wife	Catawba Mfg. Co.	4,500.00	1,366.50
Jan.	3.	Miss Maggie Parks	J. E. Morris	1,500.00	1,856.25
Jan.	6.	J. L. Parks & Wife	Catawba Mfg. Co.	28,000.00	12,048.75
Jan.	7.	Catawba Mfg. Co.	W. E. Starnes	4,500.00	3,510.00
Jan.	25.	S. K. Burnett & W.	J. W. Todd & Wife	3,200.00	1,923.75
Feb.	3.	J. C. Simmons	F. M. Perkins	11,000.00	4,218.75
Feb.	17.	M. M. Hilton & Wife	J. S. Yandle	1,180.00	776.25
Mar.	15.	John R. Pharr	R. D. Coward	15,000.00	3,815.00

Subscribed and sworn to before me this 7th day of January, 1922.

[SEAL.] (Signed) J. D. KLUTTZ,
Notary Public.

My commission expires 4/22/22.

(Here follow tables marked pages 92-105, inclusive.)

Filed Jan. 24, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS et al.

C. J. O'Brien, being duly sworn, says that he has brought together the information shown in the attached affidavits, for the several Counties of North Carolina, set opposite the name of each affiant, and finds that said affidavits show:

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Alamance	B. M. Rogers	$517,606.00	$355,184.00	68.62
Alexander	J. P. Crouch	50,175.00	24,860.00	49.54
Alleghany	E. L. McMillan	97,167.56	70,088.00	72.13
Anson	Fred J. Coxe	111,603.42	67,721.00	60.68
Ashe	C. W. Higgins	225,374.89	122,591.00	54.39
Avery	Avery Goodman	63,480.50	52,975.00	83.45
Beaufort	Chas. M. Weeks	555,540.00	393,592.00	70.84
Bertie	P. T. Perry	304,883.80	153,828.00	50.46

Bladen	D. B. Johnson	131,930.00	123,267.00	93.40
Brunswick	L. J. Poisson	61,610.00	44,600.00	72.39
Buncombe	George H. Wright	3,261,452.00	2,255,839.00	69.16
Burke	George H. Battle	96,380.00	51,268.00	53.19

107

Cabarrus	John H. Oglesby	146,619.00	90,602.00	61.78
Caldwell	John M. Crisp	85,905.00	74,960.00	87.26
Camden	P. G. Sawyer and M. B. Simpson	107,200.00	47,024.00	43.85
Carteret	D. W. Morton	121,433.00	119,800.00	98.66
Caswell	E. F. Upchurch	92,506.00	56,660.00	61.25
Catawba	Klutz B. Clippard	369,116.00	211,231.00	57.22
Chatham	Jas. L. Griffin	99,445.00	58,594.00	58.90
Cherokee	W. M. West	128,522.00	84,042.00	65.39
Chowan	R. W. Boyce	106,545.00	97,300.00	91.32
Clay	Wayne L. Swanson	54,550.00	39,010.00	71.51
Cleveland	R. L. Weathers	428,109.35	301,044.00	70.30
Columbus	L. V. Grady	228,820.00	167,222.00	73.08
Craven	Wm. Dunn, Jr	379,831.66	310,610.00	81.77
Cumberland	E. L. Hall	414,122.03	270,615.00	65.35
Currituck	P. G. Sawyer and M. B. Simpson	108,781.86	72,210.32	66.37
Dare				
Davidson	W. H. Phillips	478,760.00	258,653.00	54.02
Davie	J. S. Daniel	35,438.00	28,308.00	79.88
Duplin	H. L. Stevens	87,165.00	62,250.00	71.41
Durham	M. G. Markham	492,250.00	336,532.00	68.40
Edgecombe	J. L. Bridgers	209,382.24	133,055.00	63.00

Affidavit of C. J. O'Brien—Continued.

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Forsyth	Phillip L. Kainer, R. G. Parker, C. A. Vogler	2,139,311.57	1,526,368.70	71.34
Franklin	Hugh W. Perry	75,458.29	43,472.00	57.60
Gaston	Cecil C. Cornwell	202,167.00	136,974.00	67.70
Gates	P. L. Hoffler	133,575.00	84,760.00	63.45
Graham	A. H. Eller	39,904.50	17,486.00	43.82
Granville	C. G. Powell	272,387.87	141,930.00	52.10
Greene	.....	.....	.....	.....
Guilford	John H. McAdoo	2,337,104.00	1,627,041.00	69.61
Halifax	R. C. Dunn	237,303.50	125,777.50	54.69
Harnett	J. C. Clifford	116,685.00	70,045.00	60.03
Haywood	T. Troy Wyche	221,720.83	129,342.00	58.33
Henderson	Mrs. J. E. Bishop	678,562.05	591,194.05	87.12
Hertford	J. E. Vann	100,226.00	67,268.00	67.12
Hoke	Oscar Leach	24,042.25	22,325.00	92.85
Hyde	Elmo Mann	84,712.50	60,905.00	71.90
Iredell	John L. Millholland	224,435.00	155,250.00	69.17
Jackson	Raymond R. Nicholson	190,967.00	44,125.00	23.10
Johnston	E. F. Ward	382,507.56	224,047.25	58.57
Jones	John R. Barker	204,486.00	117,763.00	57.58
Lee	D. E. McIver	90,027.00	74,457.00	82.70
Lenoir	C. W. Pridgen	212,579.06	191,465.00	90.06
Lincoln	John E. Hoover	217,764.00	111,146.00	52.40

Macon	J. F. Ray	32,275.00	19,775.00	61.26
Madison	J. Will Roberts	29,780.00	18,327.00	61.54
Martin	H. W. Stubbs	623,064.03	238,679.00	38.31
McDowell	H. R. Ledbetter	93,675.00	54,480.00	58.16
Mecklenburg	Geo. M. Phifer	3,169,115.25	1,815,279.50	57.28
Mitchell	J. D. Pannell	93,991.00	65,056.00	69.21
Montgomery	W. L. Wright	244,638.00	158,764.00	64.89
Moore	N. A. McKeithen	210,678.00	119,410.00	56.70
Nash	J. P. Bunn	361,740.43	165,891.00	45.85
New Hanover	Wm. L. Smith	989,207.00	866,550.00	87.60
Northampton	P. F. Calvert	54,848.00	48,620.00	88.64
Onslow	Frank Thompson	82,418.00	75,475.00	91.46
Orange	J. F. McAdams	162,269.00	120,706.00	74.38
Pamlico	G. V. Rawls	41,150.00	15,556.00	37.80
Pasquotank	P. G. Sawyer and M. B. Simpson	188,681.15	126,778.00	67.14
Pender	J. T. Bland	90,000.00	64,885.00	72.90
Perquimans	W. F. C. Edwards	95,002.00	87,775.00	92.39
Person	A. P. Clayton	59,124.00	45,570.00	77.07
Pitt	C. F. Manning — J. C. Gaskins	459,976.50	383,157.00	83.00
	W. C. Hague	40,743.20	28,929.00	71.00
Polk	John M. Brittian	235,365.00	135,150.00	57.42
Randolph	H. V. Guthrie	80,070.00	55,610.00	69.40
Richmond	Wade Wishart	119,272.00	68,004.00	57.00
Robeson	Nurna Winstead	815,821.00	524,584.00	64.30
Rockingham	Max L. Barker	179,097.90	130,391.75	65.52
Rowan	M. T. Wilkie	106,706.93	79,672.00	74.70
Rutherford	H. A. Grady	222,556.00	110,837.00	49.80
Sampson	T. J. Dunn	61,200.00	39,561.00	64.64
Scotland				

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Stanly	George P. Palmer	151,374.00	119,256.00	78.78
Stokes	N. Earl Wall	169,465.00	100,339.00	59.20
Surry	B. F. Folger	198,624.00	108,860.00	54.80
Swain	D. E. Nichols	55,435.00	40,374.00	72.83
Transylvania	Roland Owen	39,950.00	24,870.00	62.25
Tyrrell	A. Melson	48,603.33	34,232.00	70.41
Union	M. L. Flow	473,906.00	331,924.00	70.00
Vance	Robert G. Kittrell	500,066.00	307,311.00	61.50
Wake	H. E. Glenn	810,175.00	716,648.00	88.45
Warren	E. C. Price	131,427.33	69,200.00	52.60
Washington	Z. V. Norman	112,102.50	58,230.50	51.95
Watauga	T. E. Bingham	207,632.00	133,018.00	64.07
Wayne	D. E. Grantham	244,675.00	87,851.00	35.91
Wilkes	Frances Hendren	113,512.40	66,214.00	58.33
Wilson	R. L. Brinkley	304,964.00	191,107.00	63.44
Yadkin	John D. Reece	71,495.00	48,128.50	67.31
Yancey	C. C. Caraway	194,974.00	173,972.00	89.22
Total		$30,598,475.24	$20,373,684.00	66.58

C. J. O'BRIEN.

Subscribed and sworn to before me, this 24th day of January, 1922.
[SEAL.]

C. J. BLAYLOCK,
Clerk U. S. Court.

110 *Order for Filing Affidavit of Members of Former Tax Commission.*

Filed Apr. 6th, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS and Others.

In this cause it is agreed by counsel and so ordered by the Court that the affidavit of the members of the former Tax Commission of North Carolina, filed in the case of Southern Railway Company against A. D. Watts, and others shall be filed and considered as a part of the evidence in the case, that is to say, the Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Norfolk & Southern Railroad Company and Atlantic and Yadkin Railway Company.

(S.) H. G. CONNOR,
U. S. District Judge.

111 *Affidavit of Members of Former Tax Commission.*

Filed Jan. 24, 1922.

STATE OF NORTH CAROLINA,
Wake County:

W. T. Lee, George P. Pell and A. J. Maxwell make this statement under oath.

That in the years 1919 and 1920 W. T. Lee, George P. Pell and A. J. Maxwell were members of and constituted the State Tax Commission, W. T. Lee being Chairman of the State Tax Commission, and had and exercised the duties and responsibilities conferred upon them by Chapter 92 of the Public Laws of 1919 and by Chapter 84 of the Public Laws of 1919, and as the State Tax Commission exercised the powers and duties of a Board of Appraisers of all properties, located within the State of North Carolina, of all railroad companies, (excepting certain incidental properties of such companies assessed by local authorities) and also had and exercised supervision of the valuation of all real property of every kind and of the listing and valuation of all personal property of every kind in all counties of the State. In the supervision of the listing and valuation of such properties by local assessing officers, under the laws hereinbefore referred to, it was the purpose to have all lands listed and valued equally at the true value of such lands, and assessing officers were required to ascertain the actual sales value of lands, where there had been a

recent sale, and to use the information thus obtained, as well as all other information obtainable, in finding the actual true value of such lands on the first day of May, 1919, and in estimating the value of other similar lands, in cases where there had been no recent sales, and that as to industrial plans of all kinds and the tracks, structures, buildings and equipment of railroad companies—properties which had not been subject to unit sales as a whole and the value of which could not therefore be determined with relation to an actual sale of such properties—it was the purpose to require, and the State Tax Commission did in so far as it could reasonably do so, the owners of industrial plants and railroad companies, to furnish information on forms prepared by experienced persons employed by the State
112 Tax Commission, complete detailed information, under authority of section thirty-one of Chapter 84 of the Public Laws of 1919, of the cost of reproduction of such industrial plants on the price level of May 1, 1919, and as to railroads the cost of reproduction of the properties of such companies new (on May 1, 1919), including side tracks, doubld tracks, and all properties owned by such companies in this State, less reasonable depreciation for such of its properties as had depreciated in value, and also information as to capital stock, bonds and other indebtedness, earnings, and so on.

The Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk Southern Railroad Company, in response to demands made upon them for specific and detailed information as to the cost of reproduction of the properties in this State of each of these companies, did file with the State Tax Commission certain sets of figures, now on file with the Commissioner of Revenue, but did not pretend that such figures even approximated the cost of reproduction of the properties owned by these companies, or either of them, in this State, in the year 1919, but, on the other hand, insisted that it would not be possible for them to furnish this information at any reasonable cost or at any cost within a period of several years. The State Tax Commission, therefore, did not have the benefit of this specific detailed information with respect to the value of the particular properties in this State of these several railroad companies which it did have with respect to, and used in, the valuation of properties of industrial enterprises within the State, and of necessity had to form its valuation of the properties of these companies without having this information and by making the best use that it could of other information furnished by these companies and information on file with and in the records of the North Carolina Corporation Commission.

One of the evidences of value submitted for consideration, by each of these companies was what is technically known as "invest-
113 ment accounts" of these companies, not within the State of North Carolina, but throughout the entire systems of railroads owned by them in many states other than North Carolina; and it was insisted by them that the proportion of their total investment account which their main line mileage within the State of North Carolina bore to the total main line mileage of each of these several

railway systems throughout the several states in which they operated would give a fair value of the property of such companies within the State of North Carolina, except that it was insisted that they had larger and more expensive terminal facilities outside the State of North Carolina than they had at any one point within the State of North Carolina, and that for this reason the straight mileage proportion of their investment account would be more than a fair proportion for this State.

The State Tax Commission was not able to agree with them that this method would fairly determine the value of their properties within the State of North Carolina, for that, first, their investment accounts represented investments made in the properties going back through a long period of years to their original organizations, and such investments having been in a large part made in years when the general price level of materials, commodities and labor was very much lower as during the year 1914 than the price level for materials, commodities and labor was on May first 1919 and 1920; and for that, second, a straight mileage proportion of their lines did not, in our opinion, accurately or fairly represent the actual value of the properties of either the Southern Railway Company, the Atlantic Coast Line Railroad Company or the Seaboard Air Line Railway Company within the State of North Carolina, the lines of these companies within North Carolina having a much greater value than an average based upon the mileage for their entire systems, in that they have a larger proportion of double track main line mileage in North Carolina than for their entire systems, and in that both the gross and net earnings of each of these railway lines within the State of North Carolina is much greater than the average gross and net
114 earnings per mile for their entire system. All of this was duly considered by the Commission in proportioning, dividing, and determining the valuation of the property of the said railroads in North Carolina as provided by law.

For the year 1918, the last calendar year prior to the first day of May 1919, the excess net earnings per mile within the State of North Carolina of each of these railway companies in excess of the net earnings per mile for their entire systems, stated in percentages as shown by their reports on file with the Corporation Commission, was as follows:

Southern Railway Company	50.48
Atlantic Coast Line Railroad Company	19.75
Seaboard Air Line Railway Company	250.01

A satisfactory estimate of value could not be made based upon the market value of the stocks and bonds of these companies on the first day of May 1919, for the reason that the limited market and limited number of shares and bonds sold on the market did not furnish, in our judgment, a fair index of the actual *b*alue of these properties as a whole, and more particularly did not furnish an index of the actual *b*alue of the properties of these companies located within the

State of North Carolina for the reasons hereinbefore stated; nor was it considered that the actual *b*alue of these properties could be fairly determined by their earnings, until there should be a fair return to normal conditions of operating costs flow of traffic and stabilization of transportation rates.

For the reasons hereinabove set out the valuation finally made or determined by the State Tax Commission of the properties of each of these railway companies within the State of North Carolina as of the first day of May 1919 was not made with the sole and exclusive relation to any one element or indicia of value, but after due and proper consideration of all of them and upon the best knowledge and information obtainable by the Commission.

115 The members of the Commission have for years been actively engaged in the matters of valuation for rate making and taxation purposes in North Carolina and are acquainted with property values of railroads in the State and in assessing the properties of the plaintiffs the Commission gave due consideration to all factors and methods prescribed by the law governing such valuations and the values of said properties as fixed and determined by the Commission are, in the opinion of affiants, fair, just and reasonable within their personal knowledge and to their personal information as to property values and particularly railroad property values in North Carolina.

As to the properties of the Southern Railway Company in the State of North Carolina, a valuation of $111,308,325 was made, which was in fact the proportion of the investment account of the Southern Railway Company which the gross earnings of that company within the State of North Carolina bore to the total gross earnings of the Southern Railway Company for the year. Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960,416, which was in fact the amount which the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis or theory of six per cent, would have produced.

In general the same method was followed in fixing the valuation of the total properties in the State of the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railroad Company, and the Norfolk and Southern Railroad Company. In each case the basic consideration was the cost of reproduction value, less depreciation, which, in the absence of correct reports of such values by the railroads as they were required by law to furnish and which were duly called for by the Commission, was arrived at as accurately as posible by a consideration of the investment account. In

116 each case a tentative cost of reproduction value was found in this way which, except in the case of the Norfolk and Southern, was in excess of the assessment as finally arrived at. In the case of the Norfolk and Southern this investment account, or cost of reproduction, value was the same as the final assessment and that railroad made no application to the Commission for re-hearing on that assessment and took no exception thereto. In the case

the other railroads, a consideration of capitalization of net income and of the other factors which the Tax Commission was authorized by to consider led to the reduction of this investment account, or cost of reproduction, value to the valuation fixed as the final assessment.

After the assessment of the properties of the plaintiffs had been arrived at by the Tax Commission pursuant to the Revaluation Act (Public Laws of 1919, Chapter 84) the Commission, as required by law, made report of its action and valuation to the General Assembly of North Carolina and thereupon, in the special session of 1920 the General Assembly, by Chapter 1, Public Laws, Extra Session 1920, specially approved said valuations as correct and adopted them as and declared them to be the basis for taxation for the years 1920-1923 inclusive, except as such valuations should be thereafter changed according to law. And the affiants are informed and believe and so aver that the said valuations, so made by the Commission and reported to the General Assembly and approved and adopted by it, have remained and still are the basis for taxation of the said railroads in North Carolina except in so far as they have been modified or changed by the Commissioner of Revenue upon application made to him by the said railroads for review as provided by law.

As to the tentative values of the engineers of the Interstate Commerce Commission, referred to by thee plaintiffs in these suits as being proper indices of the correct valuation of their total properties in North Carolina, the said tentative values were arrived at upon the basis of an inventory of the railroads' properties as of the
117 date of June 30, 1914. The affiants state of their own knowledge that the said prices prevailing in 1914 as to material, labor, and all costs of railroad construction, were abnormally low, that since that time such prices have greatly increased, and that in 1919 and in 1920 the said prices of labor, materials, and all things going into the construction of railroads were twice, if not much more than twice, as high as those of 1914 upon which the said tentative figures of the Interstate Commerce Commission were based. In the opinion of the affiants the said tentative figures in no way furnish a proper index or test of the value of the properties of railroads in North Carolina in 1919 and 1920.

It was the purpose of the State Tax Commission in valuing the property of transportation companies and other companies exercising the right of eminent domain, and in the supervision of the valuation of all other property by local assessing officers, to carry out and to have carried out what the State Tax Commission understood to be the general purpose of chapter 84 of the Public Laws of 1919, that all property of every class should be fairly and equally valued at its actual market value, and in evidence that no injustice was done to the Southern Railway Company, the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railroad Company there is attached hereto a copy of the report of the State Tax Commission to the Special Session of the General Assembly of 1920, showing by comparison, the valuation of 1920 compared with the former valuation of each of the several different classes of properties within the

State of North Carolina and showing that the increase in valuation of all railroad property within the State of North Carolina was 99 per cent; of real property 296 per cent; and of all property of all classes within the State 194 per cent.

W. T. LEE.
GEORGE P. PELL.
A. J. MAXWELL.

Sworn to and subscribed before me this January 21, 1922.
W. H. PITTMAN,
Notary Public.

Commission expires July 29th, 1922.

118 *Report of State Tax Commission on Revaluation.*

Filed Jan. 24, 1922.

It is agreed that the following report shall constitute part of the transcript of record in the case of Seaboard Air Line Railway Company vs. A. D. Watts et al.

JAMES S. MANNING,
Attorney General.

Report of State Tax Commission on Revaluation.

His Excellency T. W. Bickett, Governor of North Carolina, Raleigh.

SIR:

In our recommendations to the regular session of the General Assembly in 1919, with respect to the regular quadrennial revaluation of property then impending, the only recommendation presented with the confidence of positive conviction was that the General Assembly should provide an absolute standard of value to be applied alike to all classes of property in all counties; that it should not be further left to the conjecture of each taxpayer, and each assessing officer in each county to determine with varying opinion the standard of value by which they would be taxed. After most thorough consideration the opinion became general that there should be no further temporizing with this troublesome question, and the act which became Chapter 84 of the Public Laws of 1919, known as the Revaluation Act, and establishing a 100 per cent basis of value, was enacted by the unanimous vote of the General Assembly. The general supervision and enforcement of this law was entrusted to the State Tax Commission. We have the honor to report the successful completion of this work, and present herewith the tabulated results with the hope and confidence that after it has been subjected to careful analysis it may meet approval with the same unanimity with which the work was instructed to be done.

Before attempting any analysis of the work we must be permitted to set down in this record our deep appreciation:

First, of the coöperation received from the average citizen and taxpayer of North Carolina; the best average citizen of the world. If the work has been well done, it is because the average citizen and taxpayer of the State refused to be stampeded by appeals to his fears and selfish interests and gave his full coöperation to the extent that he furnished a full disclosure of his property and a fair estimate of its fair market value.

Second, to a group of assessing officers in the counties and districts, who in many cases accepted the responsibility as a call to perform a difficult and disagreeable but patriotic public service, and whose loyalty to the cause has at all times sustained our confidence in the complete success of this great undertaking.

The constitution of the State for fifty years has said that all property should be taxed by uniform rule according to its true value in money. Every tax law that has been enacted under that constitution has exacted a pledge of obedience to that principle. Every assessing officer has been required to swear that he would observe it, and every taxpayer that he had made his return in compliance with it. The only novel feature of the Revaluation Act was its greater determination to provide that equality in distribution of the tax burden which is the right of every citizen under the guarantee of that constitutional principle. Its only experiment was that it, too, might fail in its execution.

The exhibits attached to this report demonstrate the successful execution of the great task assigned to the assessing officers in the one hundred counties of the State. The superior excellence and thoroughness of the work appears not merely in the aggregate value of all property in the State of $3,129,423,234 compared with the former amount of $1,099,120,389, but in every test of thoroughness that may be applied.

The first interest of the taxpayer is that all property shall be listed. To the extent that property is listed or omitted the
119 tax portion of the citizens who makes a full and fair disclosure is increased or decreased. In testing the revaluation with former listing of property on the basis of quantity of property listed, rather than the value of property listed, we are dealing with known factors, leaving no room for the wide margin of difference that may obtain in dealing with matters depending upon varying opinion for the conclusions to be reached. Upon every quantity test that may be applied the thoroughness of the revaluation work is established.

A Million Acres of Discovered Lands.

Quite the most surprising item in the list is the discovery of 1,032,290 acres of land which was contributing no part to the public expense. This, in itself, is sufficient condemnation of the former indifferent methods of listing property, and points to the necessity of finding some means by which a piece of real property, once on the tax lists, can never get off. A recommendation to this end will be submitted for consideration.

Some of the most striking items of quantity increase are as follows:

Increase in personal property listed	$397,489,018
Increase in solvent credits listed	124,490,338
Increase in number polls listed	20,754
Increase in taxable incomes listed	20,931,017

(The increase in revenue to the State in the last item of increased incomes listed will be approximately $260,000, or more than double the cost to the State of the revaluation work.)

We present herewith comparative statement of total value of each of the several classes of property for the years 1919 and 1920:

	1920.	1919.	Increase.
Real property	$2,006,124,997	$506,808,394	$1,474,755,100
Personal property	807,866,443	426,062,907	377,208,201
Cotton mills	205,581,304	58,266,591	147,314,713
Woodworking and furniture factories	24,728,628	8,053,188	16,675,440
Knitting mills	19,972,015	7,102,454	12,869,561
Cotton oil and fertilizer plants	5,961,462	2,357,209	3,604,253
Grain mills	1,745,105	711,187	933,918
Vehicle manufacturers	1,240,670	472,666	868,004
Banks	35,247,693	21,255,863	13,991,830
Tobacco companies (property)	93,787,174	39,543,007	54,244,167
Miscellaneous	9,302,788	3,303,095	5,999,693
Corporation excess	20,832,385	20,000,000	832,385
Power companies	56,484,094	8,331,112	48,152,982
Railroads	250,587,158	125,417,618	125,169,540

In comparing the increase in personal property, as related to increase in real property, with the 1919 values on each, the explanation should be made that real property tax values have stood still since 1915, except for new structures, while the increase in quantity and value of personal property was listed up each year. The real values now fixed stand for four years, and based upon past experience we will expect the personal property to continue its increase during each of the four years.

The same explanation applies to assessment of all corporations except railroads. They all assessed annually, and the increase in value each year is assessed.

The New Tax Rates.

The part of this report which is presented with the greatest pride is that exhibit which indicates the tax rates which will be levied this year by the State and the several counties of the State. This

exhibit will furnish the final proof of the good faith of revaluation and answer the fears of its critics. This exhibit must of necessity attract attention beyond the borders of our State, for nothing that is fairly comparable to it in favorable tax rates can be found in any other state. Many other states have indeed gone through the same process of valuing all property at 100 per cent of actual value,
120 but few of them have been so successful in supplementing their property tax with revenue from other sources, and none of them so frugal in the appropriation and expenditure of public funds.

The tax rates levied by the State cannot exceed, under the ten per cent limitation, six cents for the combined rate for the State and pension tax, and thirteen cents for the State public school tax.

Scotland County will have the lowest rate of any county at twenty-eight cents, for all State and county purposes combined, and Clay the highest at $1.30.

Valuations Have Been Made by Local Boards.

With the exception of the valuation of railroads and public utilities, and the assistance given in the appraisal of industries, the valuations have all been made by local boards, a majority of whom were appointed by the local boards of county commissioners. District supervisors representing the Commission have worked with them constantly with the view of keeping the work at all times and in all counties on the same uniform level of values. Every valuation is a matter of judgment and can never be done with exact accuracy and equality, and of course we would make no such claim, but after having been in close touch with this work during the whole of its progress, we believe that upon the whole it is as nearly equal as we could hope to attain, and we sincerely feel that the great bulk of glaring inequalities have been removed. It is the work mainly of the property owners themselves, passed upon by their local boards, and the authority imposed in us by the State has at no time been used except where it was helpful to the local boards, or where it was absolutely essential to preserve equality.

Local Boards to Adjust Complaints.

The State Tax Commission does not wish to be entrusted with any authority not deemed essential to an efficient administration of a just and uniform tax system, and with the completion of revaluation, and to remove any possible cause of complaint, we recommend the following changes as to the relisting of real and the listing of personal property:

That between January first and June first in each year the Boards of County Commissioners of the several counties, or some other local board, be vested with authority to hear complaint of the value of any particular tract of real property upon complaint and affidavit of the owner that it stands valued in excess of the actual or market value of the property, and that if they find the property in question is

valued in excess of its actual or market value, to reduce it to what they find to be its actual or market value. Also upon complaint of inequality, that they be given authority at such times to increase the value of any real property they find to be undervalued to bring it up to the legal standard of value, and that any changes in value so made be reported to the State Tax Commission, that if found to be proper they may be investigated as upon appeal.

Future Listing Personal Property.

That for the future listing of personal property the office of County Supervisor be continued, to be appointed by the Board of County Commissioners, with authority in the County Supervisor to appoint necessary assistance, and list all personal property as under present terms of Revaluation Act.

We should hope that generally the County Supervisors now in office be reappointed, where their work has been efficient and satisfactory, and their services may be available, but this may with propriety be left with the County Boards of Commissioners. We know of no line of public service in which the merit system, based upon qualification and experience, is more desirable, and by all means we shall hope that the step from the township to the county unit of listing property be maintained.

121 "Inflated Values."

There has been some criticism that "inflated" values have been adopted as the basis of tax values. It is undoubtedly true that we have moved on to a new price level of all commodities since 1915 when real property was last valued. Nevertheless we believe that a careful analysis of the values reported will disclose that there has been a conservative compliance with the provision of the Revaluation Act that such values should be used as were "deemed to be stable." On May first of last year there was some apprehension of a post-war slump in the price of farm products, the largest controlling factor in the general price level. On the contrary, when the markets opened in the summer and fall of 1919, the prices of farm products sought new high levels, and there was a general and decided advance in real estate values. So that values as of May 1, 1919, became relatively conservative values, and we know by numerous tests that generally valuations have been conservatively made as of that date.

The increase in real estate values is large, but when subjected to any reasonable test they are shown to be conservative. In this connection it is interesting to note the increase in the total value of farm products produced in this State since 1915, when real estate was last valued:

Total value farm products, 1915	$197,185,000
Total value farm products, 1919	683,168,000

This increase in total value of farm products is in larger proportion than the total increase in assessed value of real and personal property, while taxes will be paid on these values at a greatly reduced rate of tax as compared with 1915.

Valuation of Industries.

For the first time in the history of the State there has been undertaken an accurate and uniform valuation of all the industries of the State. Large enterprises that run into millions of value are beyond the reach of the local appraiser accurately to appraise, and equal valuations as between competing industrial plants is of even greater importance than equalization as between different classes of property not competitive with each other. Under authority of the Revaluation Act the Commission employed valuation engineers to assist in this work, which has been carried on under the supervision of our revaluation clerk. Time did not permit the handling of so large an enterprise in as thorough a manner as we would have liked to have had it done, but considering this limitation the results have been very satisfactory. We are assured that such values have been made as will place upon these industries a fair share of the public burden, and certainly it will be more equally distributed between them than under the former methods of valuation. The work in this line was in the nature of assistance to the local boards by whom the final valuations were made.

Relation of Average Assessment to Par Value.

The valuations made in the manner above indicated have resulted in assessments in some cases surprisingly high as compared with the par value of the capital stock of the companies, some running as high as sixteen hundred dollars per share of one hundred dollars. The general average for the State as a whole for all cotton mills was $242 per share of $100, and of all other corporations $164 per share of $100.

Banks.

The capital stock of banks has been assessed at the full amount of capital, surplus and undivided profits, less deduction of non-taxable securities provided by statute. To this figure has been added the appreciation of bank location, buildings, as shown by revaluation of same, and the value above that carried on their books added to their surplus account for taxation purposes. This is as high as these valuations can be made.

122 Valuation of Railroads.

One frequent criticism has been that the valuation of railroad properties could not be increased, it being understood that they were assessed at full value before. Our report shows that railroad prop-

erties have been increased from $125,417,618 to $250,587,158, or more than doubled. Under the new Interstate Commerce Act the Interstate Commerce Commission is required to make rates that will yield an average return of not less than five and one-half per cent upon the railroad lines as a whole, and to find the fair value of these properties as the basis for making the new rates. That Commission has not yet determined the basis on which the value of the ralroad lines will be finally fixed. It will take several years to complete the physical valuation of all of these properties. Pending this final valuation the railroad lines have submitted to the Interstate Commerce Commission what is known as their investment accounts and have asked that this basis of value be used for determining the scales of rates and amount of return they are entitled to earn on their properties. It seems clear to us that the time has come when the value upon which a railroad or public utility is permitted to earn a return is the value upon which it should pay taxes in this State. In either case the purpose is to find the fair value of the property. So that generally our valuation of the railroad lines in this State is based upon a mileage proportion of their investment account. which they have asked the Interstate Commerce Commission to adopt as the basis for making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines, based upon the volume of business in this State greater than the average volume of traffic on their lines as a whole.

The experiences of recent years have been conclusive that any amount of tax levied against railroad companies is a tax upon the whole public served by them. If it were legal to do so, and we were to collect all public revenue from railroad companies, it would simply mean that we would pay our taxes through railroad depots and ticket offices instead of the public officers who now collect them. The new assessment of railroads does not represent as great an increase as the average increase of other property, for the reason that they were assessed relatively higher than any other property before, but we anticipate that it will meet the fair demands of public opinion when it is known that they are assessed like other property at their full value, and upon a valuation quite as high as that upon which they are asking to be permitted to earn a return.

Once On, Never Off.

The startling increase in quantity of land listed shows the necessity for adoption of some system by which a piece of real property, once on the books, can never get off. We have no assurance that it is all on now. The rapid subdivision of lands and town lots makes it more and more difficult to keep track of it all. We ought never to have to go to as much expense again to get an inventory of all these separate tracts and lots of realty. The most practical suggestion that has come to us for keeping track of it is to provide that before a transfer of real property can be put on record in the register of deeds office the grantee or his agent give a certificate to the reg-

ister of deeds, on form provided by State Tax Commission, which shall contain accurate description and all information that would be helpful to the listing officer in transferring such property to the rightful owner at the next listing period. A reasonable fee might be charged for this service, either for the benefit of the register of deeds or the county fee fund. A proper file of information of this character turned over to the listing officer would facilitate future listing and practically guarantee a full listing.

123 January First Listing.

The most important change made by the Revaluation Act, from the standpoint of efficient administration of the tax laws, was the change in listing date for all property and incomes from May first to January first, and no other feature of it has been so much misunderstood in purpose and effect.

Why the Change Was Made.

The important reasons why this change was by unanimous consent made at the regular session were:

First, that there has been a very decided tendency within the last few years for all accounting systems to be adjusted to the calendar year, rather than a fiscal year, and the records not only of corporations and businesses of all kinds to be kept and inventoried and balanced with reference to January first, but the affairs of all individuals who have sufficient income to be required to make report to the Federal Government in like manner strike balances on January first. As to all such persons, firms and corporations, it is a great inconvenience to be required to give accounting with reference to any other day in the calendar, and results in the use of approximations, rather than exact inventoried facts, being used as the basis for their return for State and county taxes. Such approximations are almost invariably made in favor of the taxpayer rather than the State. Nothing so demoralizes a tax return as the privilege of making a guess. A sworn return, taken from the books, and based upon exact inventory, is the best return the State can get.

This reason is strongly persuasive, but the still stronger reason is the fact that, with our General Assembly convening in January and completing its revision of revenue laws on the day of adjournment in March, there can never be a complete listing of all property within the time limit after such adjournment and the time when the tax books must be made up. Not even a beginning can be made until after such adjournment, and then in the brief space of time before July first the laws must be printed and interpreted, the organization for the work must be made and instructed in all changes, blank forms prepared and printed in millions and distributed, and the work of listing hurriedly, inadequately and inefficiently done. Under these conditions inefficiency will forever be the penalty for a May first listing date.

Modifications to Prevent Injustice.

When this important change was made by the General Assembly it was not unmindful of its possible effects upon the largest class of people in the State, those engaged in agricultural pursuits, and such modifications were made as were intended to prevent not only any injustice, but any injurious effect, upon this class. These modifications were:

First, exemption of full amount of three hundred dollars in value, permitted by the Constitution, of provisions and other like personal property on hand January first.

Second, permission to treat all farm products, in the hands of original producers, on January first, as solvent credits, and to deduct from the value of all such products any indebtedness owing by the producer for any purpose.

These modifications provided fully in theory against any increase in tax burden upon the farmer by reason of the change in listing date.

A Demonstration, Not An Argument.

But with the completion of the first listing under the January date, and the tabulated results in hand, it is possible to remove the subject from the speculative field and present exact facts. A tabulation of the personal property listed in all the strictly rural townships in the State shows an increase of personal property listed of 33.7 per cent. A like tabulation of personal property listed in townships having cities and towns in them shows an increase in personal property listed of 105.9 per cent. In some rural townships the
124 total value of personal property listed was actually reduced as compared with 1919 by the $300 exemption. A fair estimate is that this exemption amounted to a hundred million dollars in the State.

Property Shifted Across the State Line.

An important item in the personal property listed on the January first date is property that formerly remained in the State till after January first, the listing date across the State line in Virginia, and then shifted over in Virginia, before the May first listing date in this State. We have not complete information on this line, but have specific returns showing increase of $51,807,549 in tobacco listed on last January first greater than was listed the previous May first. A large part of this would have been in Virginia before May first. It is the custom in eastern North Carolina tobacco cities to remove their stored tobacco between these dates.

In like manner there was a considerable shifting in ownership of non-taxable government bonds between owners in these states, making them serve exemption for owners in each state in the same year.

The January first date has demonstrated its efficiency, and has demonstrated its lack of injustice. It has demonstrated that the

farmer is the beneficiary of this change. More than any other citizen he is interested that full time be given and adequate means be employed to find and list the intangible personalties that seek the cities and towns for a residence. His property is mostly tangible and visible.

Some of them have been persuaded upon misunderstanding that this change was made to do them an injustice.

Shall we surrender this change so vital to the efficient tax system? Shall we be willing to do the farmer a distinct injustice merely to satisfy what we now know to be a misinformed sentiment? Should we not rather invite his confidence by consideration for his real interest, and follow the straight course that leads to efficiency in the administration of just tax laws? No class of citizenship in North Carolina is fairer in judgment, and will be less responsive to an appeal that merits their confidence than those who till our soil.

We have ventured to argue this point at length because our experience in tax administration has brought us to know its importance. It takes time to do justice in as great a matter as the listing of all the property of the State. If after having once made this important change it be abandoned as a mistake, even though upon theories demonstrated to be untrue, it will, in our judgment, be the end of any hope of an efficient tax system.

With great respect we have submitted these views, and most earnestly recommend them to the consideration of the General Assembly.

Combine State and Pension Tax.

We recommend that the tax levied by the State for its own revenue, and for its pension fund, be combined in one figure, as State and Pension Tax. For a number of years there has been no separation of these funds, for the reason that there is appropriated a straight sum for the payment of pensions, and this is substantially in excess of the sum collected in the name of a pension tax. Both taxes combined this year cannot exceed six cents, under the ten per cent limitation, and the levy in separate items necessitates a separate calculation of tax, and a separate item on the tax books, and on the tax receipt of each taxpayer, and separate entries and calculations in all reports to the State Auditor, State Treasurer and State Tax Commission for a fund that merges into the general fund as soon as it reaches the State Treasury.

Poll Tax Exclusively for Schools.

We also recommend that the poll tax, which will be greatly reduced by the reduced general tax levy, be directed entirely to the public school fund and support of the poor. For some reason, not clearly authorized by the Constitution, a part of the poll tax, corresponding to the small property tax levy for pensions, has been calculated into the theoretical pension fund. The language
125 of the Constitution is plain that the poll tax shall be devoted to the public schools, and the poor. The small proportion

of it related to the reduced pension levy this year would in any event be almost too small to count, and as a matter of fact doesn't affect the pension fund anyway, even to that small undetermined amount, and it would seem to be appropriate to direct the whole of the poll tax as the Constitution directs.

The Ten Per Cent Limitation.

There was no more wholesome provision of the Revaluation Act than that placing a limitation upon all tax levies to be made in the State this year. Without it the revaluation could not have been successfully done. It is true that there have been some increases in governmental costs that could not have been foreseen at that time. But it seems to us none the less a pledge involving the good faith of the State. Every assessing officer in every county has relied upon this pledge and passed it on to every property owner. To break away from this pledge would dishonor the work and the workers. We take it as a matter of course it will not be done and that every tax rate in the State will be levied within the boundaries of this plighted limitation.

Not only should this pledge be kept inviolate, but it should become a matter of special care to provide ample protection against improper increase in the low rates established in future, except as such increase may be authorized by vote of the people. A fair margin of discretion must of course be left, but it is easy to find plausible purposes for levying taxes and spending public funds. The purpose of revaluation was to provide the means for raising public funds more equitably—not more easily. The maintenance of 100 per cent basis of valuations is dependent upon the continued maintenance of low rates of tax. The general property tax can be successfully maintained upon no other basis than low tax rates for the compelling reason that it bears equally upon all property whether the property at the time is yielding a return or not. Just as "the hard places are the quicksands of the law" the inherent inequalities of the general property tax will break down its morale and sooner or later defeat any effort to maintain full and equal values of property if burdened with heavy rates of tax. Whatever the legitimate necessities of the State, counties and municipalities may be in future, some scheme of revenue must be found other than that of going back to rates of tax that will not permit full, fair and equal values on property to be maintained. Our increases of revenue must come from earnings and not from deficits.

Conclusion.

We feel that we should ask for consideration of the difficulties under which this report is made, in the short time permitted for compilation and analysis after complete reports were received from one hundred counties. Perfection of analysis and guarantee of complete accuracy could not be expected. We shall hope to present it more acceptably in our annual report.

COMPARATIVE STATEMENT OF 1919 TAX RATES AND APPROXIMATE TAX RATES FOR 1920, FOR ALL STATE AND COUNTY PURPOSES COMBINED, IN EACH OF THE SEVERAL COUNTIES OF THE STATE, BASED UPON 1919 REVENUES, PLUS TEN PER CENT.

Counties	Taxable Property, 1919	General Levy—State, Pension, School and County	Revenue	Revenue with Ten Per Cent Increase	Taxable Property Revaluation	...ey to Pro-...ce Revenue ...th Ten Per ...nt Increase
Sampson	11,197,514	1.47 2-3	165,349.95	181,884.95	34,694,412	.46
Scotland	7,734,478	1.05	81,212.02	89,333.22	31,535,992	.22
Stanly	10,001,092	1.30	130,014.20	143,015.62	39,731,421	.29
Stokes	6,710,529	1.32 2-3	89,026.35	97,928.98	16,437,947	.53
Surry	13,158,055	1.66 2-3	219,300.91	241,231.00	30,097,416	.74
Swain	6,339,953	.91	57,693.57	63,463.92	13,244,303	.41
Transylvania	3,848,590	1.92 2-3	74,149.50	81,564.45	8,540,623	.89
Tyrrell	1,861,416	1.14 2-3	21,344.24	23,478.66	4,513,819	.46
Union	13,154,821	1.33 2-3	175,836.10	193,419.71	34,403,408	.50
Vance	12,323,641	1.30 1-3	160,618.12	176,679.93	30,037,293	.52
Wake	36,413,611	1.43 2-3	523,142.19	575,456.40	87,122,735	.60
Warren	8,545,834	1.11 2-3	95,428.47	104,971.31	19,826,798	.47
Washington	4,761,226	1.09 2-3	52,214.78	57,436.25	11,918,212	.42
Watauga	3,784,888	1.45	54,880.88	60,368.96	11,542,401	.46
Wayne	20,892,956	1.37	286,233.50	314,856.85	70,318,520	.39
Wilkes	7,831,737	1.94	151,935.70	167,129.27	18,673,026	.83
Wilson	17,400,663	1.61 2-3	281,310.71	309,441.78	63,950,010	.42
Yadkin	4,173,145	1.82 2-3	76,320.78	83,952.85	12,503,324	.61
Yancey	2,836,925	1.71 2-3	48,700.55	53,570.60	10,821,649	.43
	$ 1,099,120,389	$1.45	$ 16,036,265.53	$ 17,639,892.89	$ 3,158,480,072	49.8

NOTE.—This table does not purport to carry the actual tax rates to be levied in the several counties of the State, but is the maximum rates that may be levied upon the total property values in hand at the time calculations were made, and upon the presumption that the full ten-per-cent increase authorized will be levied by the counties. This amended table does not include any *State tax* except the thirteen cents levied by the State for the benefit of public schools.

With some feeling of relief that the arduous task is complete, with high pleasure that we have been permitted to serve in this just cause, with our grateful acknowledgment for the invaluable leadership and never-failing assistance and encouragement and advice which we have at all times received from Your Excellency, we have the honor to be,

Very respectfully,

W. T. LEE,
Chairman;
GEORGE P. PELL,
A. J. MAXWELL,
Commissioners.

J. S. GRIFFIN,
Revaluation Clerk.

Raleigh, N. C., August 10, 1920.

(Here follows table marked page 126.)

Comparative Statement of Taxable Values for the Years 1919 *and* 1920, *Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral, and Quarry Properties, Average Value per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed with County Supervisors.*

(NOTE.—This statement does not include railroad and public service corporations, banks, and corporate excess assessed by the State Tax Commission.)

127

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Alamance, 1919.....	257,742	$2,786,845	$10.81	$2,058,055	$6,844,638	$5,532,968	$11,377,606
Alamance, 1920.....	262,836	9,966,036	37.92	7,159,464	24,934,832	10,537,710	35,472,542
Alexander, 1919.....	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920.....	165,761	4,864,885	29.30	681,423	6,527,000	1,956,886	8,483,886
Alleghany, 1919.....	143,309	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920.....	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919.....	328,634	2,663,408	8.11	964,020	4,379,115	3,781,961	8,161,076
Anson, 1920.....	329,715	10,529,114	31.93	2,855,697	13,384,811	6,831,284	20,216,095
Ashe, 1919.....	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920.....	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919.....	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920.....	130,932	3,863,827	29.51	308,197	4,793,754	1,133,928	5,927,682
Beaufort, 1919.....	379,913	3,422,611	9.00	2,534,192	6,365,173	4,231,976	10,597,149
Beaufort, 1920.....	396,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919.....	450,883	3,040,339	6.74	862,130	4,055,859	3,467,887	7,523,746
Bertie, 1920.....	400,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919.....	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
Bladen, 1920.....	524,585	10,092,335	19.24	794,790	11,630,040	3,418,325	15,048,365
Brunswick, 1919.....	476,230	2,406,552	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920.....	502,593	5,477,845	10.90	970,035	7,953,027	2,017,305	9,970,332
Buncombe, 1919.....	312,643	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797

Buncombe, 1920	.....	.....	....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920	316,304	7,164,477	22.65	1,932,615	11,047,772	4,793,304	15,841,076
Cabarrus, 1919	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920	222,036	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919	227,055	1,809,693	7.97	669,221	3,502,721	2,142,059	5,644,780
Caldwell, 1920	258,296	7,792,632	30.17	2,896,422	13,257,242	4,458,020	17,715,262
Camden, 1919	145,857	1,083,289	7.42	58,607	1,288,061	672,329	1,960,390
Camden, 1920	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919	239,554	1,703,631	7.11	1,056,084	2,993,060	1,586,379	4,579,439
Carteret, 1920	233,162	7,972,149	34.19	1,650,790	10,405,339	2,940,095	13,345,434
Caswell, 1919	262,748	1,686,517	6.42	116,680	1,803,197	2,188,466	3,991,663
Caswell, 1920	268,746	8,743,808	32.54	309,340	9,053,148	2,920,697	11,973,845
Catawba, 1919	256,932	2,460,000	9.58	1,604,830	4,692,916	5,370,515	10,063,431
Catawba, 1920	254,423	12,339,008	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919	404,913	3,063,242	7.04	504,565	4,082,437	3,551,644	7,644,081
Chatham, 1920	435,773	10,063,328	23.09	1,243,459	11,813,037	4,594,017	16,407,054
Cherokee, 1919	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919	99,967	1,159,788	11.60	582,677	2,007,621	1,778,608	3,786,229
Chowan, 1920	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919	278,395	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920	277,843	16,422,057	59.11	4,554,698	28,158,726	11,168,356	39,327,082
Columbus, 1919	458,631	3,429,666	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920	.....	.....	....	.....	15,789,229	6,600,000	22,389,229
Craven, 1919	364,212	2,421,364	6.65	4,354,543	7,617,226	4,097,447	11,714,673
Craven, 1920	323,412	15,488,629	47.94	13,256,829	28,745,458	9,352,424	38,097,882
Cumberland, 1919	338,497	3,116,070	9.21	2,513,375	6,348,011	4,990,251	11,338,262
Cumberland, 1920	358,317	12,835,535	35.82	7,393,804	20,522,039	7,567,734	28,089,773
Currituck, 1919	148,426	1,513,584	10.20	.....	1,733,291	705,677	2,438,968
Currituck, 1920	125,080	4,541,124	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1919	208,400	494,859	2.37	100,929	626,963	301,642	928,605
Dare, 1920	.....	.....	....	.....	2,282,743	593,808	2,876,551
Davidson, 1919	35,442	.....	....	.....	6,957,305	3,806,554	10,763,859
Davidson, 1920	355,066	15,295,793	....	6,611,775	30,638,102	9,691,903	40,330,005

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Davie, 1919	160,640	1,529,050	9.52	358,529	2,294,469	3,043,548	5,338,017
Davie, 1920	162,798	7,224,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894
Duplin, 1920	457,279	23,071,185	50.45	1,100,364	24,211,549	7,285,518	31,497,067
Durham, 1919	178,534	3,569,232	19.99	8,021,399	14,777,121	20,808,813	35,585,934
Durham, 1920	182,608	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	303,562	4,131,420	13.60	3,036,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,680	2,871,776	12.45	9,546,925	14,234,803	22,223,137	36,457,990
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,486	9,172,680
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,700	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,506	8,192,666	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,289	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,986,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	326,225	5,631,242	1,663,562	7,294,894
Graham, 1919	177,414	984,505	5.55	28,350	2,132,988	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,809,736	1,337,240	6,206,976
Granville, 1919	319,516	2,839,542	8.88	1,267,086	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	38.20	3,463,640	16,088,145	6,775,885	22,864,030
Greene, 1919	159,369	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,466	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,587	48,173,459
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,889	5,425,881	10,168,771

Harnett, 1920	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919	321,154	3,037,607	9.45	1,779,507	6,120,975	2,762,717	8,883,692
Haywood, 1920	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,423,194
Hertford, 1919	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,869
Hertford, 1920	201,537	8,738,122	43.36	1,991,046	10,747,168	3,609,665	14,356,833
Hoke, 1919	224,703	2,129,767	9.48	300,364	2,653,091	2,020,935	4,674,026
Hoke, 1920	221,230	9,967,450	45.05	944,313	11,244,263	2,995,910	14,240,173
Hyde, 1919	275,961	1,540,190	5.58	40,230	1,619,250	1,071,108	2,690,358
Hyde, 1920	420,604	11,837,110	28.14	443,911	12,281,021	2,035,801	14,316,822
128 Iredell, 1919	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920	364,507	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919	291,748	1,555,849	5.33	188,013	2,168,624	1,993,645	4,162,269
Jackson, 1920	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919	481,735	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920	498,946	32,620,897	65.38	7,092,072	42,030,148	15,477,315	57,507,463
Jones, 1919	291,477	1,666,958	5.72	260,788	1,969,921	1,378,496	3,348,417
Jones, 1920	294,634	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919	155,733	1,467,390	9.42	926,313	2,735,378	2,144,202	4,679,580
Lee, 1920	163,139	6,712,698	41.15	1,019,819	8,706,469	3,371,944	12,078,413
Lenoir, 1919	222,375	2,205,289	9.92	2,329,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920	239,868	20,753,505	86.52	11,629,585	33,857,010	10,910,400	44,767,410
Lincoln, 1919	179,225	2,119,195	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920	193,391	7,504,532	38.80	2,009,709	12,584,088	5,417,219	18,001,307
Macon, 1919	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920	275,716	5,011,838	18.18	189,631	5,201,469	1,330,869	6,532,338
Madison, 1919	262,922	2,108,634	8.02	392,267	3,241,392	2,617,167	5,858,559
Madison, 1920	278,933	7,576,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,956,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	44.72	2,699,065	15,613,311	6,799,760	22,413,071
McDowell, 1919	254,751	.....	....	.....	2,675,983	1,042,136	3,718,119
McDowell, 1920	241,210	2,814,834	11.67	1,540,981	8,139,746	3,861,589	12,001,335
Mecklenburg, 1919	313,806	4,032,705	12.85	13,112,770	23,133,825	15,082,064	38,217,889
Mecklenburg, 1920	314,277	14,423,868	67.31	56,054,830	93,500,878	33,585,655	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,203	4,340,208	1,133,117	5,473,325

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Montgomery, 1919.....	288,986	1,766,532	6.11	629,642	2,858,839	2,478,702	5,337,541
Montgomery, 1920.....	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
Moore, 1919.....	415,165	3,178,355	7.65	1,871,452	5,434,221	3,005,237	8,439,458
Moore, 1920.....	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
Nash, 1919.....	335,415	3,878,799	11.50	3,219,117	7,865,680	8,391,768	16,257,448
Nash, 1920.....	323,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
New Hanover, 1919.....	92,962	2,100,440	22.59	10,087,280	14,941,453	5,406,709	20,348,162
New Hanover, 1920.....	114,132	3,171,311	28.05	14,309,005	37,517,377	12,528,021	50,045,398
Northampton, 1919.....	318,278	3,705,130	11.64	623,790	4,463,235	4,436,914	8,900,149
Northampton, 1920.....	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
Onslow, 1919.....	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
Onslow, 1920.....	416,808	7,308,697	20.69	992,565	10,807,997	2,756,647	13,564,644
Orange, 1919.....	241,018	1,951,875	7.78	1,051,230	3,916,209	3,078,757	6,994,966
Orange, 1920.....	244,404	7,866,281	32.19	2,219,764	10,086,045	6,222,234	16,308,279
Pamlico, 1919.....	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
Pamlico, 1920.....	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
Pasquotank, 1919.....	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
Pasquotank, 1920.....	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
Pender, 1919.....	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
Pender, 1920.....	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
Perquimans, 1919.....	151,630	1,431,991	9.44	473,929	2,009,068	1,684,783	3,693,851
Perquimans, 1920.....	135,126	4,579,632	33.89	1,035,330	5,739,609	2,359,005	8,098,714
Person, 1919.....	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
Person, 1920.....	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,070,795
Pitt, 1919.....	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
Pitt, 1920.....	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,391	61,871,989
Polk, 1919.....	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
Polk, 1920.....	130,925	3,221,221	24.61	403,878	5,043,541	3,691,363	8,734,904

Randolph, 1919.....	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920.....	489,717	13,352,406	27.27	2,842,531	18,468,305	7,049,532	25,517,837
Richmond, 1919.....	271,037	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,762
Richmond, 1920.....	298.155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919.....	508,200	5,661,400	11.14	2,326,580	9,063,675	8,063,294	17,126,969
Robeson, 1920.....	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919.....	345,078	3,213,287	9.08	2,215,162	8,399,673	7,917,904	16,317,477
Rockingham, 1920.....	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919.....	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920.....	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919.....	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920.....	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919.....	530,046	3,850,395	7.26	678,681	4,539,778	4,864,205	9,403,983
Sampson, 1920.....	578,092	16,169,478	28.00	2,181,805	22,717,990	9,305,331	32,023,240
Scotland, 1919.....	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920.....	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471
Stanley, 1919.....	228,929	1,794,885	7.84	1,109,296	4,727,603	3,983,469	8,711,172
Stanley, 1920.....	245,668	10,574,057	43.04	3,745,636	21,225,000	10,608,893	31,833,893
Stokes, 1919.....	274,915	2,364,379	8.60	212,216	2,618,965	3,512,301	6,131,266
Stokes, 1920.....	286,724	10,328,827	36.02	544,334	10,873,161	4,310,595	15,183,756
Surry, 1919.....	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920.....	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845.186	26.374,605
Swain, 1919.....	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920.....	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919.....	197,595	1,518,091	7.68	382,984	2,044,250	1,308,115	3,352,365
Transylvania, 1920.....	198,554	4,684,341	23.59	462,625	5,304,466	2,597,049	7,901,515
Tyrrell, 1919.....	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920.....	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830
Union, 1919.....	389,203	2,975,210	7.65	1,714,833	5,092,979	6,205,125	11,298,104
Union, 1920.....	392,429	15,605,830	39.77	4,671,356	21,444,971	10.172,675	31,617,646
Vance, 1919.....	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,175	10,121,596
Vance, 1920.....	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,735	26,519,301
Wake, 1919.....	531,678	5,708,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920.....	506,877	23,181,356	45.73	25,987,726	53,739,885	18,726,589	73,900,221
Warren, 1919.....	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920.....	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919.....	200,868	1,586,739	7.90	501,569	2,180,780	1,556,516	3,737,296

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Washington, 1920.....	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919.....	207,881	1,632,998	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920.....	217,097	6,750,358	31.09	501,234	8,820,897	2,419,708	11,240,605
Wayne, 1919.....	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920.....	339,270	27,607,644	81.37	14,860,096	47,323,132	17,666,582	64,989,714
Wilkes, 1919.....	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920.....	469,130	7,999,140	17.05	880,767	12,352,008	4,357,959	16,709,962
Wilson, 1919.....	223,631	2,866,661	12.82	3,109,243	6,323,509	9,005,000	15,328,509
Wilson, 1920.....	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,562	60,470,862
Yadkin, 1919.....	211,977	1,999,500	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920.....	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919.....	174,935	1,142,880	6.53	83,079	1,335,074	1,204,819	2,539,893
Yancey, 1920.....	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

129 *Opinion of the Court.*

Filed March 21, 1922.

In the District Court of the United States.

In Equity.

SOUTHERN RAILROAD COMPANY, ATLANTIC AND YADKIN RAILWAY Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Norfolk-Southern Railroad Company

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue and Others.

Before Waddill, Circuit Judge, Boyd and Connor, District Judges.

Per Curiam:

Bills were filed in equity by the above named Companies, to-wit: The Southern Railroad Company and the Atlantic and Yadkin Railway Company in the United States District Court for the Western Division of North Carolina and the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk Southern Railroad Company, in the Eastern District of North Carolina, against the defendants A. D. Watts and A. D. Watts, as Commissioner of Revenue, Baxter Durham, Auditor, Benjamin R. Lacy, Treasurer, and James S. Manning, Attorney General of North Carolina, in which, for the causes therein set forth they and each of them, prayed for an Interlocutory Injunction restraining and enjoining said defendants, in their individual and official capacity, from proceeding with the collection and the enforcement of payment against complainants, of certain taxes assessed, or about to be assessed, against complainants and their property, until the final hearing of said causes, for that, among other things alleged in the bills, the statutes of the State of North Carolina under, and pursuant to which, said taxes were assessed and sought to be enforced, were unconstitutional and void. Pursuant to the provisions of Section 266 of the Judicial Code, James E. Boyd, Judge of the Western District, called to his assistance in hearing said motions for Interlocutory Injunction in said causes, brought in the Western District, Edmund Waddill, Jr., Circuit Judge, of the Fourth Circuit, and H. G. Connor, Judge of the District Court of the Eastern District of North Carolina,
130 and H. G. Connor, Judge of the Eastern District, called to his assistance in hearing said motions, brought in the Eastern District, Edmund Waddill, Jr., Circuit Judge of the Fourth Circuit and James E. Boyd, Judge of the District Court of the Western District of North Carolina.

As required by the provisions of the statute, the said District Judges in the causes pending in said District, made orders in which they

directed the defendants to show cause, at a time and place therein named, why the Interlocutory Injunction should not be granted as prayed for.

The motions in said causes were, by consent of complainants and defendants, by their attorneys, heard together, at Greensboro, N. C., on January 24th, 1922, when and where said Judges being present said motions were heard upon the bills, answers, affidavits, exhibits and argument of counsel, for all parties in said causes.

The further consideration of the motions was by consent of the counsel, and order of the Court, continued to Raleigh, N. C., on March 16, 1922, when and where said Judges being present, proceeded to consider said motions upon the pleadings, affidavits, exhibits and briefs filed by counsel.

It appears from the bills and answers that the said motions, and prayer for final relief of complainants, are based upon the following allegations and contentions:

1. That the property of complainants was not assessed in the same manner and by the same method as the property of the individual citizens of the State and that the manner and methods by which complainant's property is appraised and assessed for taxation, operates as an unjust and unlawful discrimination against complainants, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and that, thereby, complainants are deprived of their property without due process of law.

2. That the appraisal and assessment for taxation of the property of complainants are not made in accordance with the provisions of the Constitution and Statutes of the State of North Carolina and that said appraisal and assessment of taxes thereon are invalid.

3. That the appraisal of the value of complainant's property is in excess of its true value, for the purpose of taxation, as provided by the Constitution of North Carolina, and is, therefore, invalid.

131 4. That the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States in the appraisal and assessment of complainants' property are violated, in that, complainants' property, alleged by the State to be assessed at its true value for taxation, the property of other taxpayers in the State, is appraised and assessed for taxation at less than its true value.

That the Franchise or Privilege Tax imposed upon complainants is invalid for that:

1. The ad valorem assessment is in excess of its true value for taxation and that the Franchise, or Privilege Tax, based thereon, in accordance with the Statutes of the State, violates the Constitution of the United States and the State of North Carolina.

2. The Franchise or Privilege Tax is in truth and fact an ad valorem tax and invalid, because not imposed upon the property of other citizens of the State.

3. That the Statute of North Carolina under, and pursuant to which the Franchise or Privilege Tax is imposed and sought to be enforced imposes a tax upon the privilege of doing business by complainant, both interstate and intrastate and is, therefore, a burden upon interstate commerce and thereby violates the Commerce Clause of the Constitution of the United States.

4. That, if the Franchise, or Privilege Tax, imposed upon complainants be valid, the method of ascertaining the value of comants' property as a basis for fixing the amount of said Franchise or Privilege Tax includes property of complainants used, as well in interstate as intrastate business and is, therefore, a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

The Court, after consideration of the bills, exhibits, affidavits and argument of counsel, is of the opinion that, for the purpose of this motion only, complainants have neither in their pleadings, nor upon the proofs adduced, made such a case as entitles them to have an Interlocutory Injunction in said causes as prayed for and
132 the motions for such interlocutory injunctions in respect to the ad valorem and the Franchise and Privilege Tax should not be granted and said motions and each of them are denied.

The Court is of the opinion that the contentions sought to be made by complainants in regard to the imposition and enforcement of the Income Tax against complainants, as provided by the Constitution of North Carolina, Article 5, Section 3, as amended, and the statutes enacted by the Legislature pursuant thereto and for the enforcement thereof are not presented upon the bills and proofs herein.

The Court, therefore, does not pass upon, or express any opinion in respect to the validity of the Income Tax, or the statutes enacted for its enforcement. Complainants may, in respect to such Income Tax, proceed without prejudice in such manner as they may be advised.

Let this opinion, and a copy thereof, be filed and an order drawn and signed to be filed in the record in each of said causes in accordance therewith.

The further proceedings in said causes, in the Courts of the District, in which they are pending, will be had as provided by the Judicial Code and the course and practice of said Courts. The costs of the motion will abide the final decrees in said causes.

At Raleigh, North Carolina,
This the 18th day of March, 1922.

(S.) EDMUND WADDILL, JR.,
United States Circuit Judge,
Fourth Judicial Circuit.

(S.) JAS. E. BOYD,
United States District Judge,
Western District of North Carolina.

(S.) H. G. CONNOR,
United States District Judge,
Eastern District of North Carolina.

133 *Order Denying Interlocutory Injunction.*

Filed March 18, 1922.

In the United States District Court for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue, and Others, Defendants.

This cause came on this 18th day of March, 1922, before the United States District Court for the Eastern District of North Carolina, held by the undersigned three United States judges sitting pursuant to the provisions of Section 266 of the Judicial Code, to be heard upon a motion for an interlocutory injunction to enjoin and restrain the State of North Carolina from collecting certain taxes enumerated in the complainant's bill, which motion was heard and considered upon the pleadings, and the affidavits filed respectively by the complainant and the defendants, and was argued by counsel, Whereupon the court composed of the three judges sitting as aforesaid, having filed an opinion denying the right of the complainant to have an interlocutory injunction, it is, for reasons stated in writing in said opinion filed in this cause, and pursuant thereto, adjudged, ordered and decreed That said injunction so prayed for, be and the same is hereby refused and denied. And it is further ordered that the defendants shall not proceed to enforce the collection of taxes involved in this litigation, for the period of thirty days from the date of this order, to the end that complainant may take such action in the premises as it is advised to.

(S.) EDMUND WADDILL, JR.,
United States Circuit Judge,
Fourth Judicial Circuit.

(S.) JAS. E. BOYD,
United States District Judge,
Western District of North Carolina.

(S.) H. G. CONNOR,
United States District Judge,
Eastern District of North Carolina.

134 *Notice of Application for Appeal and Stay of Proceedings.*

Filed March 30, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

SEABOARD AIR LINE COMPANY.

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

To the defendants in the above entitled action and Honorable James S. Manning, Attorney General of North Carolina, and Frank Nash, Assistant Attorney General, solicitors for defendants:

You will please take notice that on Thursday, March 30th, 1922, at 10:00 o'clock A. M., or as soon thereafter as counsel may be heard, the above named complainant will apply to His Honor, Henry G. Connor, District Judge, at office in Wilson, N. C., for an order allowing the complainant to appeal to the Supreme Court of the United States and granting a stay of proceedings until the appeal shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

SEABOARD AIR LINE RAILWAY COMPANY,
By MURRAY ALLEN,
Solicitor.

Filed at Wilson, N. C., March 30, 1922.
H. G. CONNOR,
U. S. Dist. Judge.

135 *Assignment of Errors.*

Filed Mar. 30, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue, et. als., Defendants.

Now comes the complainant, in the above entitled cause, and in connection with its petition for appeal from the Order entered March 18th, 1922, (by the Court convened under Section 266 of the Judicial Code of the United States), denying the motion for interlocutory injunction, files the following assignments of error:

The Court erred:

1. In decreeing that the interlocutory injunction be denied.

2. In holding that for the purpose of the motion for an interlocutory injunction only, complainant neither in its pleadings, nor upon the proof adduced, is entitled to have the interlocutory injunction applied for.

3. In failing to hold that the assessment of complainant's property for taxation is in excess of the true "actual value" of the said property as defined by the tax laws and as required by the Constitution of North Carolina, and is, therefore, invalid.

4. In failing to hold that the assessment of complainant's property for taxation is not made in accordance with the provisions of the Constitution and statutes of North Carolina, and that said assessment is invalid.

5. In failing to hold that the manner and method by which complainant's property was assessed is illegal and operates as an unjust and unlawful discrimination against complainant in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that thereby complainant is deprived of its property without due process of law and denied the equal protection of the law.

136

6. In failing to hold that the action of the Commissioner of Revenue, in declining to make a reduction in the value of complainant's property, commensurate with the horizontal reductions made by the taxing authorities under the North Carolina law per-

mitting such reductions on other property generally, was unjust discrimination, contrary to the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States.

7. In failing to hold that the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States are violated, in that complainant's property is alleged by the State to be assessed at its true value for taxation, while the property of other taxpayers generally in the State is appraised and assessed for taxation at less than its true value in money and that this appraisal and assessment of the property of other citizens and taxpayers of the State has been long continued and is arrived at under a scheme of taxation which shows intent to place an undue burden of taxation upon complainant and its property.

8. In failing to hold that the scheme of taxation of the State of North Carolina and the assessment of the properties of the various classes of taxpayers is by settled purpose and intent so designed and carried out that, while the property of complainant is assessed at its true value in money, or more than its true value in money, the large proportion of the property in the State is assessed at less than its true value in money, thereby casting an undue and excessive burden upon complainant, in violation of the Uniformity Clause of the Constitution of the State of North Carolina and in violation of the Fourteenth Amendment to the Constitution of the United States.

137 9. In failing to hold that the ad valorem assessment being in excess of true value for taxation, the so-called Franchise tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

10. In failing to hold that the so-called Franchise or Privilege tax is in truth and in fact an additional ad valorem or property tax upon complainant's property and is illegal and invalid because levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State, and the enforcement of such void statute deprives complainant of its property without due process of law, contrary to the Constitution of the United States.

11. In failing to hold that the so-called Franchise or Privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in inter and intrastate commerce, and is therefore a burden upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

12. In failing to hold that if the Franchise or Privilege tax be imposed for the privilege of engaging in intrastate commerce, it is measured in part by the value of the privilege of engaging in interstate commerce, in that it is based upon the entire value, including values derived from use in interstate commerce, and is, therefore, a burden imposed upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

13. In failing to hold that the payment of the so-called Franchise or Privilege tax is exacted as a condition precedent to the right of complainant to do "any business" in the State, whether interstate or intrastate, and, therefore, unconstitutional and void.

14. In failing to hold that the assessment made is void, in that it includes in the value used as a basis for arrival at the Franchise or Privilege tax the value of property not used in the business for
138 which the privilege is exacted, and such law and the enforcement thereof, in the manner set forth, violates the Fourteenth Amendment to the Constitution of the United States.

15. In failing to hold that the tax system of the State of North Carolina, which includes an ad valorem tax on the full value of its property in the State, including as a part thereof value it has due to its use in interstate commerce, plus a franchise or privilege tax upon the full value of the said property for ad valorem purposes, plus an income tax of three per cent on its net operating income, does, in practical operation, result in a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

16. In failing to hold that the so-called Franchise or Privilege tax is levied upon an erroneous assessment of complainant's property, in that the said property is assessed at its true value, or more than its true value, whereas, the property of individuals and other corporations is assessed at less than its true value, and complainant has been illegally denied deductions in valuation allowed other corporations and individuals.

17. In failing to hold that the so-called Franchise or Privilege tax is unconstitutional and void, in that the Legislature of North Carolina has not levied a tax on property for the support of the State government, as required by Section 3, Article 5, of the Constitution of North Carolina, but has attempted to levy revenue for the support of the State government by franchise, income, inheritance and taxes of similar nature.

MURRAY ALLEN,
Solicitor for Complainant.

139 *Order Continuing Hearing of Application for Appeal and Stay.*

Filed March 31, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

Order.

The plaintiff in the above entitled cause having presented its application for appeal to the Supreme Court from an order of Circuit Judge Waddill, and District Judges Boyd and Connor, dated March 18, 1922, and its application for a stay pending the decision of the Supreme Court upon appeal and counsel for defendants having requested of the Court a continuance,

It is now ordered that this application be continued to be heard before me at Wilson, North Carolina, at Chambers, at 11 o'clock A. M. April 8th, 1922.

That copies of this order be mailed to the Attorney General and his associate counsel.

This, the 30th day of March, 1922, at Wilson, North Carolina.

(S.) H. G. CONNOR,
United States District Judge.

140 *Order Denying Stay.*

Filed Apr. 18, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

Order.

This matter coming on to be herd at Raleigh, North Carolina, on April 15th, 1922, on application of plaintiff for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18th, 1922, until the appeal heretofore taken shall have been heard, passed upon and disposed of by the Supreme Court of the United States, and all parties being represented by counsel now before the Court:

The Court, being of the opinion that the application to continue in effect the thirty day stay granted March 18th, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this Court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States.

And it appearing to the Court that the hearing of this application has been delayed through no fault of plaintiff's, and the Court being of the opinion that the status quo should be continued until the application for restraint pending the appeal can be made to and decided by the Supreme Court of the United States, orders that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order.

EDMUND WADDILL, JR.,
United States Circuit Judge,
Fourth Judicial Circuit.

JAS. E. BOYD,
United States District Judge,
Western District of North Carolina.

H. G. CONNOR,
United States District Judge,
Eastern District of North Carolina.

141 *Stipulation of Counsel as to Record.*

Filed Apr. 15, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

It is stipulated and agreed by and between the parties to the above entitled cause:

That the Clerk, in making up the transcript of record on this appeal from the Order denying complainant's motion for an interlocutory injunction, shall include all pleadings, orders, motions, stipulations, affidavits and exhibits, constituting the entire record before the Court, except there may be omitted from the record the following:

1. The Clerk shall not include as a part of the transcript the individual affidavits of the Registers of Deeds of the 100 Counties in the State of North Carolina, together with the tabulated lists of conveyances recorded from January 1, 1921, to June 30, 1921, and setting forth opposite each conveyance the consideration in the deed and the assessed value for taxation of the property conveyed.

2. Return of the service of the notice of the hearing on complainant's application for an interlocutory injunction.

3. Return of the service of the writ upon the various defendants.

The Clerk shall include as a part of the transcript one of the said affidavits, to-wit, that from Mecklenburg County, North Carolina, together with the tabulated statement of deeds recorded and the deed value of each parcel conveyed and the assessed value for taxation of each parcel so conveyed, these being typical of all as to the form and character of information contained therein. It is unnecessary to set forth the individual affidavits of deed and tax value taken from the records of each separate County in the State, because the information shown on said separate affidavits, containing the deed value of 7,431 separate conveyances and a comparison of the tax assessment of each said parcel, is summarized in the affidavit of C. J. O'Brien which is to be included in the transcript.

It is further stipulated that the Clerk may use in preparing the record on appeal printed copies of all such pleadings, documents, affidavits, etc., as may be furnished by the parties hereto.

(S.) MURRAY ALLEN,
Solicitor for Complainant.

(S.) JAMES S. MANNING,
Solicitor for Defendants,
Attorney General of North Carolina.

142 *Memorandum of Original Papers Certified Separately.*

Petition for Appeal filed March 30, 1922.
Appeal allowed April 15, 1922.
Appeal Bond dated April 18, 1922; penalty $1,000.00; Obligors: Seaboard Air Line Railway Company and Royal Indemnity Company: Conditioned for damages and costs.
Citation dated April 15th, 1922; service accepted April 15, 1922, by James S. Manning, Attorney General of North Carolina, for A. D. Watts, Commissioner of Revenue, and other defendants.

143 *Order to Transmit Record.*

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Order to Transmit Record.

And thereupon it is ordered by the Court here that a transcript of the record and proceedings in said suit, be transmitted to the United States Supreme Court at Washington, D. C., and the same is transmitted accordingly.

S. A. ASHE,
Clerk United States District Court.

144 *Clerk's Certificate.*

In the District Court of the United States for the Eastern Disrict of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Clerk's Certificate.

I, S. A. Ashe, Clerk, United States District Court, for the Eastern District of North Carolina, do hereby certify that the foregoing pages present a full, true and correct copy of the proceedings had and orders entered in that certain suit in equity pending in said Court, wherein Seaboard Air Line Railway Company is complainant and A. D. Watts, Commissioner of Revenue of North Carolina, and others are defendants.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said District Court at the Courthouse in Raleigh, State of North Carolina, this 5th day of May, 1922.

[Seal of United States District Court, Eastern District of N. C., at Raleigh.]

S. A. ASHE,
Clerk United States District Court.

145 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue et als., Defendants.

To the Honorable H. G. Connor, District Judge of the United States for the Eastern District of North Carolina:

The Seaboard Air Line Railway Company, the above named complainant, feeling aggrieved by the order of the Court, consisting of

Circuit Judge Waddill and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code of the United States, entered in the above entitled cause on the 18th day of March, 1922, refusing and denying the interlocutory injunction applied for in this cause to restrain the defendants, until the cause could be heard on its merits, does, as provided in Section 266 of the Judicial Code of the United States, hereby appeal to the Supreme Court of the United States from the Order refusing and denying the interlocutory injunction applied for upon the grounds set forth in the assignments of error filed herewith, and complainant prays that its appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings, and documents upon which said appeal is based, duly authenticated, be sent to the Supreme Court of the United States, under the rules of such Court in such cases made and provided.

And complainant further prays that the Court enter an Order continuing in effect the thirty day stay granted by the Court in the Order entered March 18th, 1922, or an order granting a stay of proceedings by the defendants, until the appeal herein prayed for shall have been heard, passed upon and disposed of by the Supreme
146 Court of the United States.

SEABOARD AIR LINE RAILWAY COMPANY,
By MURRAY ALLEN,
Solicitor.

146½ [Endorsed:] #442. Eq. S. A. L. vs. Watts. Petition for Appeal. I certify that the within is entered and filed this day. Apr. 15, 1922. S. A. Ashe, Clerk. Filed at Wilson, N. C., March 30th, 1922. H. G. Connor, District Judge.

147 [Endorsed:] #442. Eq. In Equity. No. 442. Seaboard Air Line Railway Company vs. A. D. Watts, Commissioner of Revenue, et als. Application for appeal and stay of proceedings pending appeal. Filed at Wilson, N. C. March 30th, 1922. H. G. Connor. District Judge. I certify that the within is entered and filed this day. Apr. 15, 1922. S. A. Ashe, Clerk. Murray Allen, Attorney at Law, 709-711 Citizens National Bank Building, Raleigh, N. C.

148 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Plaintiff,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al., Defendants.

This matter coming on to be heard on the application of plaintiff for an appeal to the Supreme Court of the United States, under Section 266 of the Judicial Code of the United States, from the decree entered in this cause on the 18th day of March, 1922, refusing and denying the interlocutory injunction applied for; and upon the assignment of errors filed in said cause and presented to the Court with the said application for appeal and for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18th, 1922, until the appeal prayed for shall have been heard, passed upon, and disposed of by the Supreme Court of the United States;

And all parties being represented by counsel now before the Court on due notice.

It is ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the order and decree filed and entered herein on the 18th day of March, 1922, refusing and denying the interlocutory injunction prayed for, upon the giving of bond in the sum of $1,000.00.

It is further ordered that citation of appeal issue and be served upon the defendants or their attoneys of record, and that the Clerk of this Court prepare and forward to the Supreme Court of the United States a transcript of the record of the proceedings, pleadings, affidavits, etc., upon which the judgment herein was rendered, duly authenticated.

This 15th day of April, 1922.

H. G. CONNOR,
U. S. District Judge,
Eastern District of North Carolina.

149 [Endorsed:] Equity. No. 442. Seaboard Air Line Railway Company vs. A. D. Watts et al. Order Allowing Appeal. I certify that the within is entered and filed this day. Apr. 15, 1922. S. A. Ashe, Clerk. Murray Allen, Attorney at Law, 709-711 Citizens National Bank Building, Raleigh, N. C.

150 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, et als.

Appeal Bond.

Know all men by these presents, that we, Seaboard Air Line Railway Company, as principal, and Royal Indemnity Company, as surety, are held and firmly bound unto A. D. Watts, Commissioner of Revenue of North Carolina, and others, defendants in the above entitled action, in the sum of One Thousand Dollars ($1,000.00) lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and each of our successors and assigns by these presents.

Sealed with our seals and dated this 18th day of April, 1922.

Whereas the above named Seaboard Air Line Railway Company has prosecuted an appeal to the Supreme Court of the United States to reverse the order rendered in the above entitled cause, denying the complainant's application for an interlocutory injunction:

Now, therefore, the condition of this obligation is such that if the above named Seaboard Air Line Railway Company shall prosecute its said appeal to effect and answer all costs and damages that may be awarded against it, if it fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

SEABOARD AIR LINE RAILWAY COMPANY, [SEAL.]
By MURRAY ALLEN,
Attorney.

[Seal of Royal Indemnity Company.]

ROYAL INDEMNITY COMPANY, [SEAL.]
By CHAS. E. JOHNSON, JR.,
Attorney in Fact.

Approved April 29, 1922.
H. G. CONNOR,
U. S. District Judge.

151 [Endorsed:] #442. Eq. Seaboard Air Line Railway Company vs. A. D. Watts, Commissioner of Revenue of North Carolina, et als. Appeal Bond. I certify that the within is entered

and filed this day. May 1, 1922. S. A. Ashe, Clerk. Murray Allen, Attorney at Law, 709-711 Citizens National Bank Building, Raleigh, N. C.

152 *Citation.*

Filed 15 Day of April, 1922. S. A. Ashe, Clerk.

UNITED STATES OF AMERICA:

The President of the United States to A. D. Watts and A. D. Watts as Commissioner of Revenue et al., Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be holden in the City of Washington, on the 8th day of May, next, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of North Carolina, wherein Seaboard Air Line Railway Company is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said appeal mentioned, should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand in the City of Raleigh, N. C., in the District above named, this 15th day of April, 1922.

H. G. CONNOR,
Judge of the District Court of the United States for the Eastern District of North Carolina.

Service of within citation accepted for all defendants April 15, 1922.

A. D. WATTS,
Commissioner of Revenue, and
OTHER DEFENDANTS,
By JAMES S. MANNING,
Attorney General of North Carolina.

I certify that the within is entered and filed this day.
Apr. 15, 1922.
S. A. ASHE,
Clerk.

[Endorsed:] #442. Eq. S. A. L. vs. Watts. Citation. I certify that the within is entered and filed this day. Apr. 15, 1922. S. A. Ashe, Clerk.

Endorsed on cover: File No. 28,915. E. North Carolina D. C. U. S. Term No. 960. Seaboard Air Line Railway Company, appellant, vs. A. D. Watts and A. D. Watts as commissioner of revenue of the State of North Carolina et al. Filed May 8th, 1922. File No. 28,915.

(28,916)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 961.

ATLANTIC COAST LINE RAILROAD COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE OF THE STATE OF NORTH CAROLINA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Record from the district court of the United States for the eastern district of North Carolina	1	1
Caption	1	1
Bill of complaint	2	1
Subpœna and marshal's return of service	57	36
Subpœna and marshal's return of service	59	37
Agreement for service of subpœna	61	38
Clerk's notation on subpœna	62	39
Application for interlocutory injunction	63	39
Notice of hearing of application for interlocutory injunction and marshal's return of service	65	40
Order on application for interlocutory injunction	68	42
Agreement for hearing	69	43
Motion to dismiss	70	43
Order denying motion to dismiss	71	44
Stipulation of counsel and interlocutory order	72	45
Answer	74	47
Exhibit A—Comparative statement of taxable values, 1919-20	106	68
Affidavit of Charles J. Joseph	110	75
Exhibit A—Letter, C. J. Joseph to J. D. Griffin, April 7, 1920	123	83

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 25, 1922.

	Original.	Print.
Exhibit B—Letter, J. D. Griffin to C. J. Joseph, May 17, 1920	126	85
C—Property investment table	129	87
D—Letter, J. D. Griffin to C. J. Joseph, June 10, 1920	130	88
E—Letter, Thomas W. Davis to North Carolina Corporation Commission, July 19, 1920	130	88
F—Statement of gross operating revenue	133	90
G—Letter, Thomas W. Davis to A. D. Watts, August 15, 1921	134	91
H—Letter, Thomas W. Davis to A. D. Watts, August 13, 1921	135	92
1—Statement of taxes in North Carolina	139	95
2—Tangible property of A. C. L. in North Carolina, 1921	140	96
3—Assessment of A. C. L., 1921	143	98
4—Taxes of A. C. L. by counties in North Carolina, 1921	145	100
5—Taxes of A. C. L. in North Carolina, 1921.	146	100
Affidavit of H. C. Prince	147	101
Exhibit A—Operating revenues, 1915-1921	153	105
Affidavit of P. R. Albright	155	106
H. L. Borden	157	107
S. R. Morton	158	108
R. E. Johnson	159	108
Raymond G. Parker	160	109
Philip L. Kainer	167	111
C. A. Vogler	171	112
J. P. Bunn	175	113
C. J. O'Brien	178	114
Affidavit of members of former tax commission of North Carolina	182	119
Motion to amend and order denying same	189	124
Amendment to bill of complaint denied	190	125
Additional affidavit of Charles J. Joseph	199	130
Per curiam opinion	204	133
Order denying interlocutory injunction	208	136
Notice of application for appeal and stay	209	137
Assignment of errors	210	138
Order fixing time for hearing application for appeal and stay	215	141
Order denying stay	216	142
Stipulation as to record	217	143
Memorandum of original papers certified separately	219	144
Order to transmit record	220	144
Clerk's certificate	221	145
Petition for appeal	222	145
Order allowing appeal and fixing bond	226	146
Bond on appeal	230	147
Citation and service	234	149

1 TRANSCRIPT OF RECORD.

In the District Court of the United States for the Eastern District of North Carolina.

At a District Court of the United States for the Eastern District of North Carolina begun and held at the court house, in the city of Raleigh, on the first Monday of March, being the sixth day of the same month, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable Henry G. Connor, Judge of the District Court for the Eastern District of North Carolina.

Among others were the following proceedings, to-wit:

In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

2 *Bill of Complaint.*

Filed Sept. 26, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Individually and as Commissioner of Revenue of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; Baxter Durham, State Auditor of North Carolina; James S. Manning, Attorney General of North Carolina; Frank Nash, Assistant Attorney General of North Carolina; James H. Harris, Sheriff of Beaufort County, North Carolina; J. W. Cooper, Sheriff of Bertie County, North Carolina, et als.

To the Honorable H. G. Connor, Judge of the District Court of the United States for the Eastern District of North Carolina:

The Atlantic Coast Line Railroad Company, a corporation duly organized, created and existing under and by virtue of the laws of the State of Virginia, and a citizen and resident of said state, brings this

its Bill of Complaint against Augustus D. Watts, individually
3 and as Commissioner of Revenue of North Carolina, a citizen of the State of North Carolina whose individual residence is in the County of Iredell in said State and in the Western District thereof and whose official residence as Commissioner of Revenue of North Carolina is at the City of Raleigh in said State and in the Eastern District thereof, and Benjamin R. Lacy, Treasurer of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State and Baxter Durham, Auditor of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State and James S. Manning, Attorney General of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State and Frank Nash, Assistant Attorney General of the State of North Carolina, a citizen of the State of North Carolina, whose individual residence is in the town of Hillsboro in said State and in the Western District thereof, and whose official residence as Assistant Attorney General of North Carolina is at the City — Raleigh in said State and in the Eastern District thereof.

James H. Harris, Sheriff of Beaufort County, North Carolina,
J. W. Cooper, Sheriff of Bertie County, North Carolina,
F. L. Lewis, Sheriff of Brunswick County, North Carolina,
J. O. Ammons, Sheriff of Columbus County, North Carolina,
J. D. Williams, Sheriff of Craven County, North Carolina,
N. H. McGeachey, Sheriff of Cumberland County, North Carolina,
C. M. Ingram, Sheriff of Duplin County, North Carolina,
J. W. Thomas, Sheriff of Edgecombe County, North Carolina,
C. M. Lawrence, Sheriff of Gates County, North Carolina,
4 J. A. House, Sheriff of Halifax County, North Carolina,
J. W. McArtin, Sheriff of Harnett County, North Carolina,
B. Schull, Sheriff of Hertford County, North Carolina,
W. J. Massey, Sheriff of Johnston County, North Carolina,
J. R. Westbrook, Sheriff of Jones County, North Carolina,
L. C. Russer, Sheriff of Lee County, North Carolina,
A. W. Taylor, Sheriff of Lenoir County, North Carolina,
H. T. Roberson, Sheriff of Martin County, North Carolina,
J. L. Cornwell, Sheriff of Nash County, North Carolina,
George C. Jackson, Sheriff of New Hanover County, North Carolina,
H. L. Joyner, Sheriff of Northampton County, North Carolina,
J. R. Gurganas, Sheriff of Onslow County, North Carolina,
R. T. Murphy, Sheriff of Pender County, North Carolina,
E. R. Dudley, Sheriff of Pitt County, North Carolina,
P. H. Lewis, Sheriff of Robeson County, North Carolina,
N. A. Williams, Sheriff of Sampson County, North Carolina,
W. D. McLaurin, Sheriff of Scotland County, North Carolina,
J. E. Reed, Sheriff of Washington County, North Carolina.
5 W. D. Grant, Sheriff of Wayne County, North Carolina,
B. E. Howard, Sheriff of Wilson County, North Carolina,

citizens and residents of the State of North Carolina, and of the respective counties in said State named above, and in the Eastern District thereof,

W. S. Braswell, Sheriff of Anson County, North Carolina, a citizen and resident of said State of North Carolina and of the County of Anson and of the Western District thereof,

O. H. Britton, Tax Collector of the Town of Ahoskie, in the County of Hertford, North Carolina,

George J. Moore, Tax Collector of the Town of Atkinson, in the County of Pender, North Carolina,

W. H. Modlin, Tax Collector of the Town of Aulander, in the County of Bertie, North Carolina,

K. L. Davis, Tax Collector of the Town of Autryville, in the County of Sampson, North Carolina,

S. A. Whitehurst, Tax Collector of the Town of Ayden, in the County of Pitt, North Carolina,

J. J. Hathaway, Tax Collector of the Town of Battleboro, in the Counties of Nash and Edgecombe, North Carolina,

A. W. Perry, Tax Collector of the Town of Benson, in the County of Johnston, North Carolina,

J. S. Rollins, Tax Collector of the Town of Bethel, in the County of Pitt, North Carolina,

Sidney Bone, Tax Collector of the Town of Black Creek, in the County of Wilson, North Carolina,

W. A. Best, Tax Collector of the Town of Bolton, in the County of Columbus, North Carolina,

R. H. Byrd, Tax Collector of the Town of Burgaw, in the County of Pender, North Carolina,

J. M. Byrd, Tax Collector of the Town of Calypso, in the County of Duplin, North Carolina,

E. M. Williamson, Tax Collector of the Town of Cerro Gordo, in the County of Columbus, North Carolina,

6 O. H. McCumbie, Tax Collector of the Town of Chadbourn, in the County of Columbus, North Carolina,

L. H. Honeycutt, Tax Collector of the Town of Clinton, in the County of Sampson, North Carolina,

C. B. Bryant, Tax Collector of the Town of Conetoe, in the County of Edgecombe, North Carolina,

T. W. Pridgen, Tax Collector of the Town of Delco, in the County of Columbus, North Carolina,

U. S. Page, Tax Collector of the Town of Dunn, in the County of Harnett, North Carolina,

J. J. Farmer, Tax Collector of the Town of Elm City, in the County of Wilson, North Carolina,

J. F. Whitehead, Tax Collector of the Town of Enfield, in the County of Halifax, North Carolina,

J. D. Biggs, Tax Collector of the Town of Everett, in the County of Martin, North Carolina,

W. T. O'Berry, Tax Collector of the Town of Evergreen, in the County of Columbus, North Carolina,

R. E. Cribb, Tax Collector of the Town of Fair Bluff, in the County of Columbus, North Carolina,

R. I. Bowden, Tax Collector of the Town of Faison, in the County of Duplin, North Carolina,

D. M. Lawson, Tax Collector of the Town of Fairmont, in the County of Robeson, North Carolina,

James S. McNeill, Tax Collector of the City of Fayetteville, in the County of Cumberland, North Carolina,

R. A. Keen, Tax Collector of the Town of Four Oaks, in the County of Johnston, North Carolina,

R. F. Benton, Tax Collector of the Town of Fremont, in the County of Wayne, North Carolina,

O. C. Matthews, Tax Collector of the Town of Garland, in the County of Sampson, North Carolina,

E. C. Markham, Tax Collector of the Town of Godwin, in the County of Cumberland, North Carolina,

W. E. Mudd, Tax Collector of the Town of Gibson, in the
7 County of Scotland, North Carolina,

Joe Warrick, Tax Collector of the Town of Goldsboro, in the County of Wayne, North Carolina,

J. O. Duvall, Tax Collector of the Town of Greenville, in the County of Pitt, North Carolina,

D. M. C. Moore, Tax Collector of the Town of Grifton, in the County of Pitt, North Carolina,

W. F. Coppedge, Tax Collector of the Town of Halifax, in the County of Halifax, North Carolina,

W. D. Bell, Tax Collector of the Town of Hassell, in the County of Martin, North Carolina,

E. G. Bowden, Tax Collector of the Town of Hobgood, in the County of Halifax, North Carolina,

Alex. Bullard, Tax Collector of the Town of Hope Mills, in the County of Cumberland, North Carolina,

L. D. Sykes, Tax Collector of the Town of Jamesville, in the County of Martin, North Carolina,

C. P. Ange, Tax Collector of the Town of Jacksonville, in the County of Onslow, North Carolina,

D. A. Gore, Tax Collector of the Town of Jonesboro, in the County of Lee, North Carolina,

Thomas Asque, Tax Collector of the Town of Kelford, in the County of Bertie, North Carolina,

C. L. Lawrence, Tax Collector of the Town of Kenly, in the County of Johnston, North Carolina,

W. B. Coleman, Tax Collector of the Town of Kinston, in the County of Lenoir, North Carolina,

H. N. Wayne, Tax Collector of the Town of Lake Waccamaw, in the County of Columbus, North Carolina,

S. G. Gunter, Tax Collector of the Town of Lucama, in the County of Wilson, North Carolina,

C. M. Usher, Tax Collector of the Town of Lumber Bridge, in the County of Robeson, North Carolina,

Edward Townsend, Tax Collector of the Town of McDonald, in the County of Robeson, North Carolina,

G. H. Joyner, Tax Collector of the Town of Magnolia, in the County of Duplin, North Carolina,

8 J. M. Edwards, Tax Collector of the Town of Maxton, in the County of Robeson, North Carolina,

R. J. Henderson, Tax Collector of the Town of Maysville, in the County of Jones, North Carolina,

L. M. Austey, Tax Collector of the Town of Micro, in the County of Johnston, North Carolina,

—— ——, Tax Collector of the Town of Mount Olive, in the County of Wayne, North Carolina,

S. M. Dickens, Tax Collector of the Town of Nashville, in the County of Nash, North Carolina,

S. H. Lane, Tax Collector of the City of Newbern, in the County of Craven, North Carolina,

John Evans, Tax Collector of the Town of Oak City, in the County of Martin, North Carolina,

Roy Byrd, Tax Collector of the Town of Orrum, in the County of Robeson, North Carolina,

A. H. Perry, Tax Collector of the Town of Parkton, in the County of Robeson, North Carolina,

Louis Williams, Tax Collector of the Town of Parmele, in the County of Pitt, North Carolina,

Joe Garcia, Tax Collector of the Town of Pembroke, in the County of Robeson, North Carolina,

George D. Barnes, Tax Collector of the Town of Pikeville, in the County of Wayne, North Carolina,

E. J. Mead, Tax Collector of the Town of Plymouth, in the County of Washington, North Carolina,

R. P. Bender, Tax Collector of the Town of Pollocksville, in the County of Jones, North Carolina,

Lonnie Mooring, Tax Collector of the Town of Princeville, in the County of Edgecombe, North Carolina,

C. G. Stephens, Tax Collector of the Town of Proctorville, in the County of Robeson, North Carolina,

N. P. Mercer, Tax Collector of the Town of Red Springs, in the County of Robeson, North Carolina,

T. A. Patrick, Tax Collector of the Town of Robersonville, in the County of Martin, North Carolina,

9 W. E. Cade, Tax Collector of the Town of Rocky Mount, in the Counties of Nash and Edgecombe, North Carolina,

D. J. Bledsoe, Tax Collector of the Town of Roseboro, in the County of Sampson, North Carolina,

H. E. Harrelson, Tax Collector of the Town of Rose Hill, in the County of Duplin, North Carolina,

R. C. Hockaday, Tax Collector of the Town of Rowland, in the County of Robeson, North Carolina,

C. L. Gunter, Tax Collector of the Town of Sanford, in the County of Lee, North Carolina,

C. L. Lawrence, Tax Collector of the Town of Scotland Neck, in the County of Halifax, North Carolina,

J. H. Griffin, Tax Collector of the Town of Selma, in the County of Johnston, North Carolina,

B. H. Farmer, Tax Collector of the Town of Sharpsburg, in the County of Nash, North Carolina,

W. L. Fulter, Tax Collector of the Town of Smithfield, in the County of Johnston, North Carolina,

J. O. Proctor, Tax Collector of the Town of Spring Hope, in the County of Nash, North Carolina,

C. A. Maxwell, Tax Collector of the Town of Stedman, in the County of Cumberland, North Carolina,

H. B. Burton, Tax Collector of the Town of Tabor, in the County of Columbus, North Carolina,

J. H. Jacocks, Tax Collector of the Town of Tarboro, in the County of Edgecombe, North Carolina,

J. H. Piland, Tax Collector of the Town of Tunis, in the County of Hertford, North Carolina,

J. E. Wright, Tax Collector of the Town of Turkey, in the County of Sampson, North Carolina,

J. F. Skipper, Tax Collector of the Town of Wade, in the County of Cumberland, North Carolina,

W. D. Murray, Tax Collector of the Town of Wallace, in the County of Duplin, North Carolina,

W. H. Drawhorn, Tax Collector of the Town of Warsaw, in the County of Duplin, North Carolina,

10 J. R. Meekins, Tax Collector of the Town of Washington, in the County of Beaufort, North Carolina,

W. F. Garrish, Tax Collector of the Town of Watha, in the County of Pender, North Carolina,

J. W. Pierce, Tax Collector of the Town of Weldon, in the County of Halifax, North Carolina,

A. G. Taylor, Tax Collector of the Town of Whitakers, in the Counties of Edgecombe and Nash, North Carolina,

D. S. Hayes, Tax Collector of the Town of Whiteville, in the County of Columbus, North Carolina,

C. F. Page, Tax Collector of the Town of Williamston, in the County of Martin, North Carolina,

B. H. Dewey, Tax Collector of the City of Wilmington, in the County of New Hanover, North Carolina,

H. F. Barnes, Tax Collector of the Town of Wilson, in the County of Wilson, North Carolina,

J. L. Hobgood, Tax Collector of the Town of Winterville, in the County of Pitt, North Carolina,

W. H. Hedgepeth, Tax Collector of the Hobgood Special School District, in the County of Halifax, North Carolina,

J. W. Pierce, Tax Collector of the Weldon Graded School District, in the County of Halifax, North Carolina,

J. F. Whitehead, Tax Collector of the Enfield Graded School District, in the County of Halifax, North Carolina,

D. J. Milliken, Tax Collector of the Halifax Graded School District, in the County of Halifax, North Carolina,

J. E. Branch, Tax Collector of the Garner Brickwell School District, in the County of Halifax, North Carolina,

B. M. Wormsley, Treasurer of the Goose Nest Township Road District, in the County of Martin, North Carolina,

11 F. L. Haislip, Tax Collector of the Hamilton Township Road District, in the County of Martin, North Carolina,

B. F. Goodwin, Tax Collector of the Williamston Graded School District, in the County of Martin, North Carolina,

W. L. Reddick, Tax Collector of the Robersonville Graded School District, in the County of Martin, North Carolina,

citizens and residents of the State of North Carolina and of the Eastern District thereof,

J. B. Martin, Tax Collector of the Town of Morven, in the County of Anson, North Carolina,

S. J. Lowery, Tax Collector of the Town of McFarlan, in the County of Anson, North Carolina,

H. W. Clark, Tax Collector of the Town of Wadesboro, in the County of Anson, North Carolina,

citizens and residents of the State of North Carolina and of the Western District thereof.

And thereupon complainant complains and prays:

1. That the complainant was at all times hereinafter mentioned, and is now, a corporation duly created, organized and existing under and by virtue of the laws of the State of Virginia, and is a citizen of said state and is not a citizen of North Carolina and it did at all times hereinafter mentioned and does now operate, own, lease and control lines of railroad and other property in and through the States of Virginia, North Carolina, [and in and through the above named counties, cities and towns in the State of North Carolina,] South Carolina, Georgia, Florida and Alabama and is now and was at all such times operating said lines of railroad in interstate commerce. The total mileage of road so operated, owned, leased or controlled by the complainant as of May 1, 1921, in the State of North Carolina and elsewhere was 4,889.76 miles and the total miles of roads operated, owned, leased or controlled by complainant as of said date was distributed between mileage in the State of

12 North Carolina and outside of the State of North Carolina (by separate lines, divisions and branches) as is shown in the following statement:

Virginia	147.22
North Carolina	1,043.79
South Carolina	929.41
Georgia	725.97
Florida	1,791.62
Alabama	251.75
Total	4,889.76

The ratio or proportion which the length of the lines leased, operated or controlled in North Carolina bore to the total length of miles operated, owned, leased or controlled in the State of North Carolina and elsewhere was .21346 per cent.

2. That the defendant, Augustus D. Watts, is Commissioner of Revenue of the State of North Carolina, duly appointed by the Governor of North Carolina, and under and by virtue of Chapter 40 of the Public Laws of North Carolina of 1921, and duly qualified under the laws of said State and is a citizen of North Carolina whose individual residence is in the County of Iredell in said State and in the Western District thereof, and whose official residence as Commissioner of Revenue, is at the City of Raleigh in said State and in the Eastern District thereof; that the defendant, Benjamin R. Lacy, is the State Treasurer of the State of North Carolina, duly elected and qualified under the laws of said State and is a citizen and resident of the County of Wake in the Eastern District of said State; that the defendant, Baxter Durham, is the State Auditor of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State; that the defendant, James S. Manning, is Attorney General of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern
13 District of said State; that the defendant, Frank Nash, is Assistant Attorney General of the State of North Carolina and a citizen of the State of North Carolina, whose individual residence is in the town of Hillsboro in said State and in the Western District thereof, and whose official residence as Assistant Attorney General of North Carolina is at the City of Raleigh in said State and in the Eastern District thereof, and that the other defendants, except the defendant W. S. Braswell, Sheriff of the County of Anson and the defendants J. B. Martin, S. J. Lowery and H. W. Clark, Tax Collectors of the towns of Morven, McFarlan and Wadesboro, in Anson County, respectively, are all residents of the respective cities, towns and counties hereinabove set out and are residents of the Eastern District of the State of North Carolina, and the said defendant, W. S. Braswell, Sheriff of the County of Anson and the said defendants, J. B. Martin, S. J. Lowery and H. W. Clark, Tax Collectors of the Towns of Morven, McFarlan and Wadesboro, in the said County of Anson, respectively, are citizens and residents of the Western District of North Carolina; that the said Sheriffs and Tax Collectors are severally charged with the duty of collecting the taxes levied in their respective counties, cities and towns.

3. This is a suit in equity and arises under the laws and Constitution of the United States as will hereinafter particularly appear, and the amount in controversy in this case, exclusive of interest and costs, as will be more specifically shown, exceeds the sum and value of three thousand dollars ($3,000.00). Among other things this suit is brought to redress and prevent the deprivation under color of the several statutes of North Carolina of certain rights and immunities secured to the complainant by the Constitution of the United States—that is, the right to have and enjoy its property without being deprived thereof without due process of law, and with-

out being denied the equal protection of the law, and this
14 suit involves the further question as to whether or not the special assessments sought to be made and imposed by the defendants, interfere with, burden, obstruct and regulate commerce with foreign nations and among the several states.

4. That by Chapter 164 of the Public Laws of North Carolina of 1899, ratified on or about the 6th day of March, 1899, the General Assembly of North Carolina passed an act entitled "An Act to Establish the North Carolina Corporation Commission," which said Act has from time to time been supplemented and amended, and is brought forward in the Consolidated Statutes of North Carolina, of 1919, as Chapter 21, and said Corporation Commission under said Chapter of said Consolidated Statutes of North Carolina was created the Board of State Tax Commissioners with the powers and duties prescribed by Article 4 of Chapter 131 of said Consolidated Statutes which said Consolidated Statutes have been revised and amended by the laws of North Carolina known as the Revenue and Machinery Acts of 1919, special session of 1920 and session of 1921, of the Public Laws of North Carolina, reference to all of which is herein prayed.

5. Complainant shows that the tax sections of the Constitution of North Carolina and the plan of taxation now in force in the State of North Carolina, as applicable to this complainant and other railroads in the State, are as follows:

(*a*) Section 3 of Article 5 of the Constitution of North Carolina provides in part as follows:

"Sec. 3. Taxation Shall be by Uniform Rule and ad Valorem: Exemptions.—Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money * * * The General Assembly may also tax trades, professions, franchises and incomes." etc.

15 Section 6 provides:

"Sec. 6. Taxes Levied for Counties.—The total of the state and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the state for the term required by article nine, section three, of the constitution: Provided, further, the state tax shall not exceed five cents on the one hundred dollars value of property."

Section 9 of Article 7 of the Constitution of North Carolina provides as follows:

"All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same except property exempted by this Constitution."

(*b*) Prior to the first day of May, 1921, the Commissioners selected from time to time under authority of law to establish the North Carolina State Tax Commission constituted a Board of Appraisers and Assessors for Railroad companies and other companies exercising the right of eminent domain.

(*c*) Under an Act of the Legislature of North Carolina, ratified on the 8th day of March, 1921, Public Laws of North Carolina, Session 1921, page 288, the powers and duties of the State Tax Commission were transferred and imposed upon the Commissioner of Revenue.

(*d*) Under Sections 62, 62*a*, and 63 of the Act of the Legislature of North Carolina, approved March 8, 1921, page 225 of the Public Laws of North Carolina, Session 1921, at page 263 (hereinafter referred to as the Machinery Act), it is provided that railroad companies must file certain returns.

(*e*) Under Section 64 of said Machinery Act, it was made the duty of the Commissioner of Revenue, at such dates as real estate is required to be assessed for taxation, to first determine the value of the tangible property of each division or branch of such railroad, of rolling stock, and all other physical or tangible property.

Section 64 then provides:

"This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions to be considered as in the case of private property."

Section 64 also provides:

"They" (referring to the State Tax Commission for which there was thereafter substituted the Commissioner of Revenue as set forth above) "shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property."

Section 64 also provides:

"The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be appor-

tioned in the same proportion that the length of such road in
17 each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certify on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city or town."

(*f*) Section 65 of the Machinery Act provides for a proportional valuation of interstate railroads in the proportion which the length of the main line of road in the State of North Carolina bears to the whole length of such main line of road, and to determine the value in the State of North Carolina accordingly. Said section contained the following proviso:

"Provided, the Commission shall, in valuing the fixed property in this state, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this state, and any other factor which would give a greater or less value per mile of road in this state than the average value for the entire system. On or after the first Monday in July, the said Commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said Commission may, if they see fit, require all argument and communications to be presented in writing."

(*g*) Section 82 (6½) of an Act entitled "An Act to Raise Revenue" approved March 8, 1921, page 147, of the Public Laws of North Carolina, Session 1921, at page 193, provides as follows:

"Railroads.—Every railroad company doing business in this state shall annually on or before the thirtieth day of July make and return to the State Tax Commission in such form and upon
18 such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require for the purpose of carrying out the provisions of this section and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this state shall be found to be the value of the property, tangible and intangible, of each such railroad company in the state assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this state shall be one-tenth of one per cent (0.1%) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make report provided for, it shall be the duty of the State Tax Commission to make an appropriation from the

reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city, or town shall be allowed to collect any taxes under this section."

(*h*) Section 82 (3½) of the said Act provides as follows:

"That where a report required to be made under the provisions of this section to the State Tax Commission by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which report is made, or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under rules laid down in section 82 of this act to be less than one-half of the assessed value for taxation of all the property of such company in this state for the year in which such report is made, the measure of the extent to which the corporate franchise of any such corporation is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation in this State."

The State of North Carolina levies also an income tax as provided in the income tax act of 1921, which levies upon the net income for the calendar year of 1921 taxes as set forth in said act, page 203 of the Public Laws of North Carolina, Session 1921, amounting to three per cent (3%) on the net income of this corporation. Said Act, in Section 202, provides for the assessment of the income tax against railroads as follows:

"Sec. 202. Railroads and Public Service Corporations.—The basis of ascertaining the net income of every corporation engaged in the business of operating a steam or electric railroad, express service, telephone or telegraph business, or other form of public service when such company is required to keep records according to the standard classification of accounting of the Interstate Commerce Commission shall be the 'net operating income' of such corporations as shown by their records kept in accordance with that standard classification of accounts, when their business is wholly within this state, and when their business is in part within and in part without the state their net income within this state shall be ascertained by taking their gross 'operating revenues' within this state, including in their gross 'operating revenues' within this state the equal mileage proportion within this state of their interstate business and deducting from their gross 'operating revenues' the proportionate average of 'operating expenses,' or 'operating ratio,' for their whole business, as shown by the Interstate Commerce Commission standard classification of accounts. From the net operating income thus ascertained shall be deducted uncollectible revenue,' and taxes paid in this state for the income year, other than income taxes and war profits and excess profits taxes, and the balance shall be deemed to be their net income taxable under this act."

6. Complainant further shows that the said State Tax Commission assessed and certified the ad valorem assessment of the properties of the complainant in the State of North Carolina, tangible and intangible, for the year 1919 at the sum of $34,645,345, of which the tangible property was assessed at $15,891,000 and the intangible property at $18,754,345, upon which sum this complainant paid taxes to the State of North Carolina and the several counties and cities through which its line of railroad runs.

7. That in and by Chapter 84 of the Public Laws of North Carolina, of 1919, entitled "An Act to Provide for the Listing and Valuing of all Property, Real, Personal and Mixed at its Real Money Value," ratified the 11th day of March, 1919, the Legislature of North Carolina, provided for a revaluation of all real and per-
21 sonal property in North Carolina which said re-valuation was made under the direction of the State Tax Commission and certified down in the year 1920, as the value of real and personal property in the state of North Carolina at its true value in money, under which said valuation, the tangible and intangible property of this complainant in the State of North Carolina was fixed by the said State Tax Commission and certified down to the various cities and towns in said state as being the sum of $50,867,800, of which the tangible property was assessed at $39,620,930, and the intangible property at $11,246,870.

8 That complainant protested the said valuation and assessment so made by the said State Tax Commission for the year 1920, and paid under protest the taxes assessed thereon to the said State and to the several counties, cities and towns through which its railroad runs.

9. That in and by an Act of the General Assembly of North Carolina, ratified the 8th day of March, 1921, entitled "An Act to Transfer the Powers and Duties of the State Tax Commission to the State Department of Revenue" being Chapter 40 of the Public Laws of 1921, from and after the first day of May, 1921, all the powers and duties imposed by any act of law, including the Revenue and Machinery Acts, enacted by the General Assembly of 1921, upon the State Tax Commission, were transferred to and imposed upon a department to be known as the State Department of Revenue, to be administered by the Commissioner of Revenue, which office was created by said Act and the appointment to which provided to be filled by the Governor, by and with the advice and consent of the Senate, and if such an appointment should be made while the Senate was not in session, confirmation of such appointment was provided in said Act to be made at the next session of the Senate. The term of office of the said Commissioner of Revenue was fixed at
22 four years from and after the first day of May, 1921, and under the said Act the Governor of North Carolina appointed the defendant Augustus D. Watts to be Commissioner of Revenue, and the said defendant duly qualified and is now and has been since May 1, 1921, Commissioner of Revenue.

10. Among other things it was provided in Chapter 38 of the Public Laws of 1921, as follows:

"Sec. 28 (*a*). County Boards to Review Valuation of Real Estate.—"The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen (any vacancy which may have occurred to be filled by appointment of the board of county commissioners), shall meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of real property as heretofore appraised and assessed in the county as a whole is in excess of the fair value of such property at the time of meeting of such board. The chairman of the board of county commissioners shall be the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be secretary of the said board. The said board shall make proper inquiry and investigation into the existing values of real property as compared with the assessed and appraised values thereof in the several cities, towns and townships of the county, and if it shall find that the assessed value of such property is in excess of the actual value, it shall find the average percentage of such excess in the county as a whole, or in the
23 several cities, towns and townships, and shall report its findings so made to the State Tax Commission not later than the twentieth day of April, one thousand nine hundred and twenty-one. The values so reported shall be the values at which the property shall be assessed for taxation unless and until the same have been changed and revised by the State Tax Commission and certified to the board of county commissioners of such county, which shall be done not later than the first day of July one thousand nine hundred and twenty-one.

"Sec. 28 (*b*) Specific Complaints.—The board of county commissioners of the several counties shall have and exercise authority to hear and determine specific complaints of over-valuation or under valuation of any particular tracts of real property, and after the general equalization order provided for in the preceding subsection has been made, any person who owns property subject to taxation and who finds that said property stands assessed for taxation, after such equalization order has been made at an amount in excess of the actual value of such property on the first day of May, one thousand nine hundred and twenty-one, may have the right to have the same reassessed and reappraised by the said board by filing with the clerk of the board of county commissioners some time during the month of May, one thousand nine hundred and twenty-one an application in form and substance as follows:

To the Board of County Commissioners, —— County:

I hereby make application for the reassessment of the real
24 property hereinafter described, for the reason that the said property is now assessed in excess of its actual value on the

first day of May, one thousand nine hundred and twenty-one and do hereby certify that in my best judgment the actual value of said property on that date was as it is stated herein to be:

Location, ——.
Condition, ——.
Acreage, ——.
Assessed Value, ——.
Actual Value May 1, 1921, ——.

—— ——,
(Signature of Complainant.)

Any citizen of the county may file complaint of the under valuation of any real property in the county, or the board may of its own motion revise the valuation of any property that it finds to be valued at more or less than the actual value of such property on the first day of May, one thousand nine hundred and twenty-one.

The county board of commissioners may appoint the county auditor or any resident freeholder of the county, who has general knowledge of the value of the real property of the county, to investigate any and all complaints filed under the provisions of this section, and make report and recommendations to the said board as to the true value in money of such properties. The county board of commissioners shall thereupon approve or revise such recommendations, and shall, not later than the fifteenth day of July, one thousand nine hundred and twenty-one, make report to the State Tax Commission of the increases and reductions in the valuation of specific properties made under authority of this section.

"Sec. 28 (*c*) If the board of county commissioners of any county, at their regular monthly meeting on the first Monday in
25 April one thousand nine hundred and twenty-one, shall be of the opinion that the valuation of real estate in such county is so unequal as between the owners of real property in such county as to require a more general revision of assessments than is practicable to be made under the provisions of subsections (*a*) and (*b*) of this section, or the value of real property as heretofore appraised in such county as a whole is in excess of the present actual value of such property, it may by resolution so find and order that such revision be made. In the event such order is made, it shall be in lieu of the remedies provided in subsections (*a*) and (*b*) of this section, and the board of county commissioners shall appoint a board of review, composed of three resident freeholders, who have general knowledge of the value of real estate in such county, and such board of review may appoint such number of assistants as in their judgment is necessary to complete such revision, not later than the first day of July, one thousand nine hundred and twenty-one. The said board shall take and subscribe to an oath to perform their duties according to the provisions of this act according to the best of their ability, and shall give notice by public advertisement that the board, or one of its members or assistants, will attend at least one day in each township, and as long as shall be necessary to hear evidence as to the true value of the real property therein, and of any property over-valued or under-

valued; and the said board shall proceed as speedily as possible to hear and determine what the present true value thereof is, and to make such general review and revision of the assessed value of real property in such county as it finds is necessary to be made, to
26 the end that the same may be fairly and equally assessed, at its present actual value in money. A complete abstract of such revised assessment, by townships, giving average value per acre, and value of town lots, and the value as a whole, shall be made to the board of county commissioners of such county and to the State Tax Commission, not later than the fifteenth day of July, one thousand nine hundred and twenty-one, and shall be subject to the authority of the State Tax Commission as a State Board of Equalization, so as to preserve a proper equalized value of real property in the several counties. The board of county commissioners shall fix the expense that may be incurred under this section, such expense to be borne by the county.

"Sec. 28 (*d*) The report of the board of county commissioners, made pursuant to section twenty-eight (*b*), and the abstracts as reported by the board of review under section twenty-eight (*c*), shall be the basis for the assessment of taxes, unless and until the same are changed by the State Tax Commission on or before the first day of September, one thousand nine hundred and twenty-one and the said State Tax Commission shall, on or before the first day of September, one thousand nine hundred and twenty-one certify down to the board of county commissioners of the several counties, its findings and conclusions upon said report and abstracts.

"Sec. 28 (*e*) In any proceeding under this Act the county board of review or county board of commissioners, or any of their representatives, shall have access to the questionnaires filed by the owners of the real property in the county under chapter eighty-four
27 of the Public Laws of one thousand nine hundred and nineteen, the tax rolls for the several townships, and any other records pertaining thereto.

It shall be the duty of the State Tax Commission to exercise the authority of supervision herein imposed, to the end that, as nearly as may be, property of all classes in all counties of the state may be fairly and equally valued in accordance with the requirements of the Constitution and the provisions of this act, and if in any case in doubt as to whether changes in valuation in any county should be approved, it shall have the authority, and it shall be its duty, to make or cause to be made, such investigation as it may deem necessary to determine the facts and reach a just conclusion.

The words "actual value," as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold.

"Sec. 28 (*f*). Any taxpayer in any county may appeal, within thirty days, to the State Tax Commission, from any findings by the Board of county commissioners.

"Sec. 28 (*g*). Any taxpayer owning property assessed originally by the State Tax Commission may make application to the State Tax Commission for a review of the assessment of its property in the same manner herein provided for complaint by property owners before the county boards, and the State Tax Commission may hear and determine such complaints."

11. That acting in accordance with the authority imposed upon them by Section 28*a* of said Chapter 38 of the Public Laws
28 of 1921 the Boards of County Commissioners and County Boards of Appraisers and Review of the counties hereinbelow set out, appointed under Chapter 84 of the Public Laws of 1919, met jointly as provided in said statute, and within the time appointed therein, as the County Boards of Review, to determine if the value of real property, as theretofore appraised and assessed under said Chapter 84 of the Public Laws of 1919 in said counties, as a whole, was in excess of the fair value of such property at the time of the meeting of such boards, and after making inquiry and investigation into the excess of the assessed and appraised valuation of real property, in the several cities, towns and townships in said counties, as is provided in said section 28*a*, found that the average percentage of excess in the said counties as a whole was as is in the next paragraph herein set out, and reported their various findings to the State Tax Commission as provided in that section, and the said State Tax Commission did not change or revise the said valuation, and, in accordance with the said section, the said percentage values so reported became the values at which the real property in said counties was assessed for taxation for the year 1921, the same being the percentage reduction in the value of such real property which had theretofore been assessed for taxation in the year 1920 under said Chapter 84 of the Public Laws of 1919.

12. The reductions made in said assessments and valuations of real property in the several counties, and in the several cities, towns and townships therein through which complainant's line of railroad runs, for the year 1921, under the valuation and assessment of the year 1920, are as follows:

Anson	20%, and 10% in towns.
Beaufort	25%
Bertie	25%
Cumberland	10%
Edgecombe	50%

29 and in the Town of Rocky Mount 20% and in the other cities and towns in that county 25%

Gates	10 %
Halifax	40 %
Hertford	33⅓%
Johnston	33⅓%
Jones	30 %
Lee	33⅓%
Lenoir	25 %
Martin	33⅓%
Nash	50 %

and in the Town of Rocky Mount 20% and in the other cities and towns in that county 25%.

Northampton	33⅓%
Onslow	20 %
Pender	25 %
Sampson	25 %
Washington	25 %
Wayne	33⅓%

and in cities and towns 16⅔%.

Wilson	33⅓%

and in cities and towns of Wilson and Elm City 10%.

13. Complainant further shows that in accordance with Section 28c of said Chapter 38 of the Public Laws of 1921, a re-valuation and new assessment was ordered and made in the counties of Craven, counties and upon such re-valuation the real property in those counties was reduced by the following percentages under the assessment of the year 1920, to-wit:

Duplin, Pitt, Robeson and Scotland of the real property in those

Craven	27%
Duplin	14%
Pitt	15%
Robeson	39%
Scotland	1.1%

And upon the certification of such re-valuation to the said State Tax Commission and Board of Equalization no change was made
30 by the said State Tax Commission and said Board of Equalization and thereupon said revaluation so made by the said

County Board of Review became the value of the real property in those counties for the year 1921 and assessments thereon were and are made in accordance therewith.

14. Your complainant shows that the Board of County Commissioners and County Board of Appraisers and Review of Brunswick, Columbus, Harnett and New Hanover Counties made no reduction and certified no reduction in those counties to the State Tax Commission.

15. Complainant further shows that the assessment and valuation of the real property in the counties in North Carolina through which this railroad runs, for the year 1920, as shown by the report of the State Tax Commission on Revaluation, to the Governor of North Carolina, dated August 10, 1920, was $707,216,601. This assessment and valuation has been horizontally reduced by percentages as authorized by Section 28*a* of the said Machinery Act of 1921 and by the revaluations as authorized by section 28*c* of the said Act, to $522,558,657, or an average reduction for the year 1921 of 26.11%, while the average tax rate levied in the said counties has increased 104%, as shown by the table below. Complainant is informed and believes that in addition to the said increases in said county taxes there have been large increases in special taxes, levied for schools, road districts and other purposes in the various counties, cities and towns, but this complainant has been unable to obtain all of these figures. The assessments for 1920 and 1921, and the tax levies for these counties are hereinbelow set out:

31 County.	Assessment real property 1920.	Tax levy 1920.	Percentages of reduction authorized by State.	Valuation 1921 on reduced percentages.	Tax levy 1921.	Percentages of increase in county tax levy.
Anson	$13,384,811	.40	20%	$10,707,849	.98	145%
Beaufort	29,207,006	.59	25%	21,905,255	1.00	70%
Bertie	13,958,782	.47	25%	10,469,087	.85	81%
Brunswick	7,953,027	.47	None	7,953,027	.85	81%
Columbus	15,789,229	.52	None	15,789,229	.80	54%
Craven	28,745,458	.56	27% Revaluation Appx.	21,000,000	.90	61%
Cumberland	20,522,039	.61	10%	18,469,836	.79	30%
Duplin	24,211,549	.41	14% Revaluation	20,748,928	.65	58%
Edgecombe	34,955,056	.257	50%	17,477,528	.602	134%
Gates	5,631,242	.46	10%	5,068,118	.64	40%
Halifax	35,636,872	.76	40%	21,382,124	1.35	77%
Harnett	20,823,234	.34	None	20,823,234	.70	105%
Hertford	10,747,168	.39	33⅓%	7,164,779	.95	143%
Johnston	42,030,148	.26	33⅓%	28,020,099	.82	215%
Jones	8,447,840	.32	30%	5,913,488	.90	181%
Lee	8,706,469	.46	33⅓%	5,804,313	.80	74%
Lenoir	33,857,010	.44	25%	25,392,757	1.04	136%
Martin	15,613,311	.40½	33⅓%	10,408,874	.83½	107%
Nash	36,300,096	.44	50%	18,150,048	.92	109%
New Hanover	37,517,377	.60	None	37,517,377	1.20	100%
Northampton	12,367,534	.51	33⅓%	8,245,023	.68	33⅓%
Onslow	10,807,997	.44	20%	8,646,397	.80	82%
Pender	8,492,798	.50	25%	6,369,599	.92	84%
Pitt	44,254,598	.43	15% Revaluation	37,647,932	.75	74%

Robeson	48,024,939	.34	39% Revaluation	29,283,084	.70	106%
Sampson	22,717,990	.37	25%	17,038,492	.90	143%
Scotland	21,319,716	.1542	.01% Revaluation	21,077,571	.48	211%
Wayne	47,323,132	.32	33⅓%	31,548,755	.87	172%
Washington	7,468,873	.56	25%	5,601,654	Rate not fixed	
Wilson	40,401,300	.46	33⅓%	26,934,200	.96	108%
	$707,216,601			$522,558,657		
	522,558,657					
	$184,657,944					

Reduction in Valuations 26.11%.

Average percentage of increase in rate 104%.

32 16. This complainant further shows that for the year 1921 the Commissioner of Revenue fixed the valuation of the ad valorem assessment of the property of the complainant in North Carolina at the sum of $51,163,717.00, of which $39,916,847.00 is tangible and $11,246,870.00 is intangible property, and said assessment and valuation being $295,917.00 in excess of said assessment and valuation for the year 1920, and has certified the said valuation and assessment down to the several counties, cities and towns and to the State Auditor and State Treasurer of North Carolina in accordance with the law of North Carolina.

17. In assessing and valuing the property of your complainant for the year 1921, the Commissioner of Revenue declined to give to your complainant the benefit of any horizontal percentage reductions upon the real property of your complainant which was allowed to other persons and corporations, and your complainant protested against said assessment and requested a hearing. A hearing was had before the said Commissioner of Revenue August 16, 1921, and facts were produced before him showing that such assessment so made by him was unfair, was discriminatory, and would be taking the property of your complainant without due process of law, and denying to it the equal protection of the law and was not uniform, and was not made in accordance with said Chapter 38 of the Public Laws of 1921, and should be reduced in order to equalize the value of the complainant's property with that of other persons and corporations assessed for taxes for the year 1921 under the laws of North Carolina.

18. Complaint further shows, as an instance of the injustice, unfairness and discrimination practiced by the said Commissioner of Revenue in assessing the property of this complainant for the year 1921, that in the re-valuation of the real property in Nash and Edgecombe Counties, all of the real property in those counties, ex-
33 cept the property lying within the incorporated towns was horizontally reduced 50% from the valuation of 1920, while none of the property of this complainant and the other railroads in Nash and Edgecombe Counties was reduced, except the real property in those counties assessed by the local assessors. The result is that while other taxpayers generally will pay no more taxes this year, due to the increase in rate and decrease in assessment, this complainant will, due to the increase in rate of taxation and paying upon the same assessment as last year, pay an increase of taxes this year to Nash County of approximately 109% and to Edgecombe of approximately 134%.

19. Complainant further shows that section 62 of the said Machinery Act of 1921 provides:

"* * * that all machine and repair shops, general office buildings storehouses and contents located outside of the right of way and also real and personal property other than the property as returned above to the State Tax Commission, shall be listed for the purposes

of taxation by the principal officers or agents of such companies with the list takers of the county where the real and personal property may be situated in the manner provided by law for the listing and valuation of real and personal property. A list of such property shall be filed by such company with the State Tax Commission * * *."

In making returns to the Commissioner of Revenue (formerly the State Tax Commission), such property is shown under the heading "property outside of the right of way listed with the local list-takers," the value of which for the year 1920, belonging to complainant, was assessed at $1,677,178, and notwithstanding the fact that reductions in assessments upon this property for 1921, were made by the local assessors to the amount of $78,601.00, the Commissioner of
34 Revenue refused to allow complainant this reduction in the final assessment made by him of the aggregate valuation of complainant's property.

20. Complainant further shows that Section 62*a* provides:

"Sec. 62*a*. Railroad Companies Required to File Maps, etc.— * * * Every such company shall also report the value of any and all buildings and structures within the limits of any such city or town, whether on or off its right of way, and the commission shall find the value of all such real estate, buildings and structures, and shall certify to such city or town the value of same, in addition to the value per mile of so much of its main line as may be located within such city or town, for ad valorem taxation."

The returns to said Commissioner of Revenue made by the railroads under the laws of North Carolina, show an itemized statement of valuation of all such structures owned by the complainant, whether in the cities and towns or outside of the cities and towns, and also a description and valuation of the lands outside of the right of way, upon which the Commissioner of Revenue refused to allow the percentage reduction given by the various Boards of Review in the counties in which they are situated.

As an instance, complainant shows that the City of Rocky Mount lies partly within the County of Nash and partly within the County of Edgecombe, and the main line track of this complainant running through the said City of Rocky Mount is the dividing line between the two counties. This complainant has large properties, such as shops, tracks, sidings, transfer stations, freight and passenger stations in Nash and Edgecombe Counties. A part of this property lies within the City of Rocky Mount and a part without. That portion of the real property within the said city of Rocky Mount of this complainant, assessed by the local assessors, was reduced 20% from the valuation of last year, while that lying outside of the
35 City of Rocky Mount assessed by the said local assessors was reduced 50% from the assessment of 1920, while that portion of the real property lying within the City of Rocky Mount and without the City of Rocky Mount, assessed by the Commissioner of Reve-

nue was not reduced in any respect, and this discrimination is a denial to complainant of the equal protection of the law and takes its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and of Section 3 of Article 5 and Section 9 of Article 7 of the constitution of North Carolina which are especially pleaded and relied upon.

21. In addition to the failure of said Commissioner of Revenue to give to your complainant the *the* reduction which, under the law of North Carolina as above set forth, it is entitled to, the Commissioner of Revenue has certified down to the various counties, cities and towns an amount, exceeding by $295,917.00, what would be the correct calculation even if this complainant was not entitled to any reduction at all, and even if the basis adopted by the said Commissioner of Revenue for the valuation of the complainant's property was correct, in that he has certified down an amount of local property which is in excess of the true amount as assessed by the local assessors in the several counties, cities and towns.

22. In arriving at the valuation and assessment for the year 1921, your complainant avers that the total assessment and valuation as found by the said Commissioner of Revenue for the year 1921 should be reduced by giving to the complainant the same average percentage reduction upon its real property as was made in the various counties throughout which this complainant's railroad runs, and which was given to all persons and corporations within those said counties, and which average reduction is 26.11%, as shown in paragraph 14 hereof,
and your complainant further avers that the failure and re-
36 fusal of the said Commissioner of Revenue to give to this complainant such reduction and the failure to reduce the total assessment by $78,601 the amount of decrease allowed by the local assessors and the addition erroneously of the sum of $297,917 to the assessment of 1920, and the enforcement of such assessment takes complainant's property without due process of law, and denies to complainant the equal protection of the law, in violation of the Fourteenth Amendment to the Constitution of the United States, and denies to it the protection it is entitled to under Section 3 of Article 5 and Section 9 of Article 7 of the Constitution of North Carolina, which provide for uniform taxation.

23. Complainant further shows that the said Commissioner of Revenue has refused to make any attempt whatsoever to equalize the value of complainant's property with the property of other persons and corporations and that under the laws of North Carolina there is no appeal from the assessment and valuation fixed by the said Commissioner of Revenue and the Attorney General of North Carolina has advised the said Commissioner of Revenue to this effect in a written opinion. Complainant avers that the said Machinery Act of North Carolina provides an appeal to the State Board of Equalization of the said State of North Carolina to all persons and corporations, except railroads, and the failure and refusal of the laws of North Carolina to provide an appeal to the railroads and to give

an appeal to all other persons and corporations is a denial of the equal protection of the laws and of the uniformity clause of the Constitution of North Carolina.

24. Complainant further avers that all of said acts hereinabove recited on the part of the said Commissioner of Revenue are discriminatory and in violation of Section 3 of Article 5 and Section 9 of Article 7 of the Constitution of North Carolina and of the
37 Fourteenth Amendment to the Constitution of the United States, which are especially pleaded and relied upon.

25. Complainant is advised, and on information and belief states, that the tax rates either have been or will be materially increased in the said counties in order that the amount of needed revenue may be raised. The actual result of this status is that the assessment of complainant's property remains practically the same, whereas the asessment of other property is reduced. The causes which brought about a decrease in value of real estate in the counties in which the reduction was made apply with even greater force to complainant's property. The decrease of value has not been confined to real property of individuals but applies alike to real property of complainant. Complainant avers that the reduction being horizontal, shows that it was not based upon any reduced value of any particular piece of real property or upon facts individual to any individual piece of real property, but is, and was intended to be, a general scheme of reduction due to general conditions, applicable alike to all and should, therefore, be applied alike to all, and Complainant should derive the benefit thereof, and its failure to receive the benefit thereof is contrary to Section 3 of Article 5, and Section 9 of Article 7 of the North Carolina Constitution and to the Fourteenth Amendment to the Constitution of the United States, in that it denies to the complainant the equal protection of the law and takes its property without due process of law.

26. Complainant further avers that Section 65 of the said Machinery Act of 1921 provides as follows:

"Sec. 65. Railroads.—When any railroad has part of its road in this state and part thereof in any other State, the said commission shall ascertain the value of railroad track, rolling stock and all other property liable to assessment by the State Tax Commission of such company as provided in the next preceding section, and di-
38 vide it in the proportion to the length such main line of road in this State bears to the whole length of such main line of road, and determine the value in this State accordingly: Provided, the Commission shall, in valuing the fixed property in this State, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State than the average value for the entire system. On or after the first Mon-

day in July, the said commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said Commission may, if they see fit, require all argument and communications to be presented in writing."

27. Complainant further avers that the method employed by the State Tax Commission in arriving at the valuation of complainant's property for the year 1920 in North Carolina was illegal, and resulted in the over assessment of complainant's property for taxation under the laws of North Carolina, and that the Commissioner of Revenue unjustly and illegally refused to reduce said assessment for the year 1921, and, complainant avers that it endeavored to ascertain from the said State Tax Commission the method employed by it in arriving at said assessment but was unable to obtain said information from the State Commissioner of Revenue, but complainant is informed and believes and upon such information and belief alleges:

That in endeavoring to compute the value of railroad property for the year 1920, the State Tax Commission took, or attempted to take, the average earnings of railroads for the years 1915 to 1919 inclusive, which they found or endeavored to find by deduct-
39 ing from the revenue allocated to North Carolina, the average annual taxes paid in said State and the average annual operating expenses allocated to the said State. Complainant further shows that the determination of the net income for the State of North Carolina cannot be arrived at justly and fairly by such a method, because allocation of operating expenses to any branch, or division of a railroad or to any State is made arbitrarily and not with mathematical accuracy. Complainant shows that the allocation of operating expenses to branches or sub-divisions is made regularly, but only for comparative purposes, and is recognized not only to be mathematically incorrect but does not truly represent the said expenses, and, further, that such allocation is made to States because of the State laws and regulations requiring it. Complainant avers that under the existing accounting methods of allocating expenses to North Carolina, operating expenses so allocated are understated and net income overstated in this. For instance: that only expenses accruing within that State are so allocated, while traffic passing through that state is assembled or originates at, and is destined to terminal points without North Carolina, at which large operating expenses accrue, only a part of which is apportioned to this State, while the revenue therefrom is apportioned to North Carolina, and, as an illustration, complainant shows that on a train load of citrus fruit or vegetables originating in Florida destined to New York there are first assembling charges, and then terminal expenses at Jacksonville, Florida, and at Potomac Yards, Virginia, and various other expenses in connection with icing, originating on the line of road, no part of which is charged to the North Carolina expenses, while the North Carolina revenue is apportioned with full credit of the operating revenue.

That on a shipment originating in North Carolina, destined to southwestern points, going via Savannah, Georgia, and Montgomery,

Alabama, there are terminal expenses at Montgomery, Ala-
40 bama, no part of which are chargeable against the revenue in North Carolina, and likewise, on shipment originating in North Carolina to New York via Pinners Point, Va., there are heavy terminal expenses at Pinners Point, Va., where complainant has invested large sums of money in terminal facilities, docks, barges, tugs, etc., while the full mileage proportion of the entire revenue is credited to North Carolina.

28. Complainant further shows that this method of allocating earnings from the property to the State of North Carolina under the North Carolina statute is illegal and works to a disadvantage of the complainant for the purpose of ascertaining the net income in North Carolina for that:

(*a*) Traffic which moves through North Carolina greatly exceeds the traffic originating in or destined to North Carolina, and, therefore, North Carolina escapes terminal expenses on a large volume of the total traffic.

(*b*) The terminal expenses on traffic originating in or destined to North Carolina are very much less than those without the State at points like Pinners Point, Va., Charleston, S. C., Jacksonville, Fla., Montgomery, Ala., Brunswick, Ga., Savannah, Ga., Richmond, Va., and Tampa and Port Tampa, Fla. That under such plan the result is a showing that the ratio of operating expenses to operating revenues in North Carolina is less than those of the entire system which plaintiff avers is not true.

(*c*) It owns various other property outside of the State of North Carolina not used in railroad business, which, although not used in this company's business in the State of North Carolina, yet under this scheme of taxation is taxed by the taxing authorities of the State, for the reason that there are no deductions made by the said Commissioner of Revenue of such items before allocation to North Carolina.

And the complainant shows that the operating revenues and operating expenses for its entire system are kept accurately
41 and its accounting is done under the rules and regulations prescribed by the Interstate Commerce Commission, and is checked by that body and also by certified public accountants, and that if the value of its property is to be determined by a capitalization of its net income the capitalization of such net income for the entire system should be used in order to determine the value of its entire property, but that this should be apportioned to North Carolina and the other States through which it runs, upon a fair and reasonable method, making just and reasonable allowance for operating expenses and for terminals and other like properties outside of said State.

29. Complainant avers that in arriving at the valuation of its property for the year 1920 the North Carolina Tax Commission did not

assess and value the property of this complainant according to the law of North Carolina, and shows that under neither the net earnings plan nor under the stocks and bonds plan the said Commission have arrived at the valuation which it placed upon complainant's property and complainant avers that said valuation, and especially the intangible valuation so placed upon its property, was made upon an arbitrary basis and without justification. The said Commission assessed the tangible property, year 1920, at a valuation of $39,620,930, or 149.33 per cent. more than assessed by them in 1919; they arrived at this value by taking the Investment in Road and Equipment of the entire system and distributing to North Carolina on a basis of mileage owned, making no deductions on account of the large and costly terminals at Pinners Point, Virginia; Charleston, South Carolina; Savannah and Brunswick, Georgia; Jacksonville, Tampa and Port Tampa, Florida, etc., causing a greater excess value per mile of line outside of this State as compared with those inside.

The intangible property was assessed at $11,246,870, which
42 was not assessed in accordance with Sections 64 and 65 of the Machinery Act of 1921, making the aggregate valuation $50,867,800. Complainant further shows that its operating revenues and expenses for its entire system for the years 1916 to 1920, inclusive, were as follows:

Entire System.

Year to Dec. 31.	Gross operating revenues.	Operating expenses and taxes.	Net operating revenue.
1920	$74,121,955.70	$72,285,528.83	$1,836,426.87
1919	63,559,015.27	56,009,911.01	7,549,104.26
1918	56,992,329.24	45,158,302.38	11,834,026.86
1917	44,063,331.25	32,037,994.91	12,025,336.34
1916	37,322,085.42	25,904,015.30	11,418,070.12
Total for 5 years	$276,058,716.88	$231,395,752.43	$44,662,964.45
Average	$55,211,743.37	$46,279,150.48	$8,932,592.89

and if its said earnings were capitalized on the average net operating revenue for said period at the rates of 6%, 7% and 8% and prorated to North Carolina on a mileage basis and on a gross earnings basis the results would be as shown below, any one of which results, upon either basis, is far below the assessment and valuation fixed by the State Tax Commission and the Commissioner of Revenue:

Allocation to North Carolina.

Rate.	Capitalized system values.	Operated mileage basis.	Gross-earnings basis.	1921 assessment com. of rev.
6%	$148,876,548.17	$32,279,413.17	$39,054,784.88	$51,163,715.00
7%	127,608,469.85	27,668,068.43	33,475,529.89	
8%	111,657,411.12	24,209,559.88	28,291,088.65	

Complainant submits below a statement of its operating results for the State of North Carolina for five years with the average net operat-

ing revenue, less taxes, and the average, which is $2,503,811.94, if capitalized at 6%, 7% and 8% would give the result shown
43 below, all of which are greatly below the valuation fixed by the State Commissioner of Revenue:

Capitalization of Earnings—State of North Carolina.

Year.	Gross operating revenue.	Operating expenses and taxes.	Net operating revenue.
1920	$18,623,234.36	$17,827,740.58	$795,493.78
1919	17,376,471.19	15,288,496.14	2,087,975.05
1918	14,816,308.86	11,611,468.63	3,204,840.23
1917	11,584,617.49	8,314,909.01	3,269,708.48
1916	10,217,647.65	7,056,605.49	3,161,042.16

Average Net Operating Revenue, less Taxes	$2,503,811.94
Capitalized at 6%	41,730,199.00
Capitalized at 7%	35,768,742.00
Capitalized at 8%	31,297,649.00

Complainant, therefore, avers that the said assessment of the Commissioner of Revenue amounts to a tax on its property beyond the jurisdiction of the State of North Carolina, and is a burden upon interstate commerce and in violation of the commerce clause of the Constitution of the United States.

30. Complainant is informed and believes, and on such information and belief alleges that the State Tax Commission and Commissioner of Revenue in capitalizing used a percentage of 6%. At the time said assessments were made complainant, and other like Railroad Companies enjoying the highest credit, were paying not less than 7½% and in some instances 8% when railroad securities earning 6% were not worth par on the market.

Complainant's lines of railroad run through six states and the legal rates of interest in those states are as follows:

Virginia	6%
North Carolina	6%
South Carolina	7%
44 Georgia	7%
Florida	8%
Alabama	8%

and complainant, therefore, avers that the rate at which the average net income should be capitalized is not less than 8%, which rate does not allow anything for the hazard of such an investment.

31. Complainant shows that its net operating revenue, less taxes in the State of North Carolina, in 1916, was $3,161,042.16, while in 1920, it fell to the sum of $795,493.78 or a decrease of $2,365,548.38, or 74.81 per cent, while the ratio of operating expenses and taxes to operating revenue increased from 69.41 per cent in 1916 to 97.36 per cent in 1920, and notwithstanding the fact that the Commissioner of Revenue had these facts and figures before him, he

refused to give any consideration to said figures, while on the other hand he allowed various reductions to other persons and corporations on their reduced earning power.

32. Complainant shows that the statute in North Carolina, above referred to, required the Commissioner of Revenue in arriving at the value in North Carolina to consider the value placed upon the property by the public, as evidenced by the value of capital stock, bonds, certificates of indebtedness and other obligations, the value of which is based upon the earning capacity of the property. Complainant further shows that its capitalization, par value, on May 1, 1921, the date of valuation was as follows

Stock and Bonds.

Capital Stock	$68,782,900.00
Mortgage Bonds	102,124,000 00
Income Bonds	15,000.00
Miscellaneous Obligations	4,580,555.00
Trust Bonds	6,629,500.00
Notes	6,000,000.00
	$188,131,955.00
45 Miles of Road Owned	4,750.85
Average Value per mile	$39,599.64
Miles Owned in North Carolina	1,039.16
Value in North Carolina on Mileage Basis	$41,150,361.90

and that even if the value to be considered was the par value of complainant's stocks, bonds, certificates of indebtedness and other obligations outstanding the valuation arrived at upon this basis is $41,150,361.90.

But complainant further avers that the average market value of its stocks, bonds certificates of indebtedness and other obligations outstanding for the year 1920 and to August 31, 1921, were as follows:

(Here follow tables, marked pages 46 and 47.)

FIGURES TAKEN FROM PUBLICATION BY COMMER

	Closing Price April 30, 1921 Bid	Asked	
A. C. L. R. R. Co.:			
Common Stock	82½	(Sale)	
Preferred Stock	No sales or quotations		
4% Certificates of Indebtedness	Last record:	1916:	High
Ten Year Secured 7% Notes	99½	(Sale)	
Convertible Debenture 4% Bonds	64	65½	
General Unified "A" 4½% Bonds	75	(Sale)	
General Unified "B" 4% Bonds	No record of transactions.		
Unified 4% Bonds	Last record:	Sales in 1914	
First Consolidated 4% Bonds	76¾	(Sale)	
Equipment Trust "B" 4½% Bonds (Yield Basis)	7%	6.50%	
Equipment Trust No. 4 6% Notes	No transactions since issu		
Equipment Trust No. 4-A 6% Notes	No transactions since issu		
Equipment Trust "D" 6½% Cert. (Yield Basis)	7.40%	6.40%	
A. C. L. R. R. of S. C. 1st 4% Bonds	74	75½	
Alabama Midland Ry. 1st 5% Bonds	90½	93	
Brunswick & Western R. R. 1st 4% Bonds	74	83	
Brunswick & Western R. R. Income 5% Bonds	No record of transactions.		
Charleston & Savannah Ry. 1st 7% Bonds	102	----------	10
Florida Sou. R. R. 1st 4% Bonds	70	73	
Norfolk & Carolina R. R. 1st 5% Bonds	88	----------	
Norfolk & Carolina R. R. 2nd 5% Bonds	Last record:	Sale in 1915	a
Northeastern R. R. Con. 6% Bonds	98	----------	
Petersburg R. R. "A" 5% Bonds	92	----------	
Petersburg R. R. "B" 6% Bonds	97	98½	
Richmond & Petersburg R. R. Con. 4½% Bonds	80	----------	
Savannah, Fla. & West. Ry. 1st 6% Bonds	101½	----------	
Savannah, Fla. & West. Ry. 1st 5% Bonds	92	----------	
Sanford & St. Petersburg R. R. 1st 4% Bonds	Available records since 1910 transactions.		
Wilmington & New Bern R. R. 1st 4% Bonds	Last record:	Sale in 1912	a
Wilmington & Weldon R. R. Gen. 4% Bonds	80	----------	
Wilmington & Weldon R. R. Gen. 5% Bonds	91	----------	

A—Asked.
B—Bid.

Closing Price May 3, 1920 Bid	Asked	1920 High	1920 Low	To August 31, 1921 High	1921 Low
86	(Sale)	104¼	82	89¼	77
gh 92½: Low 90¼.					
		108¼	95¼	104	99
55	60	72-A	55-B	72-A	63-B
70	(Sale)	78¼	68	79	72¼
s.					
14 at 93 and 92					
72¼	(Sale)	80	69¼	81	73¼
7½%	7%	5.50-A	7.75-B	6.75-A	6.90-B
sue.					
sue.					
				6.40%	6.52%
77	83	79-A	70-B	78-A	73-B
91¼	96	92¼	90¼	95	91
77	83	79¼	78	79	78¼
s.					
109½	113	Last record:	Sale:	1915 at 129½.	
60	70	80-A	60-B	80-A	67-B
83	90	97-A	83-B	92-A	83-B
5 at 104½.					
97			95-B		100-B
83	90	96-A	83-B	95-A	89-B
97	100	107-A	97-B	98½-A	97-B
70			70-B		76-B
98		100¾	98¼		99-B
92½		91	91	89	89
10 do not show any					
2 at 95.					
70		85-A	70-B		75-B
88		96-A	80-B	92-A	88-B

		Total Par Value 1920	Average Market Value 1920	Total Market Value 1920	Average Market Value 1921	Total Market Value 1921
Capital Stock		$ 68,782,900	94	$ 64,655,926	88	$ 57,089,807
		Total Par-Value Outstanding				
Sanford & St. Petersburg	1st Mtg	$ 275,000	79*	$ 217,250	79*	$ 217,250
Petersburg R. R. Co.—Class "A"	1st Mtg	868,000	89	772,520	92	798,560
Petersburg R. R. Co.—Class "B"	2nd Mtg	800,000	102	816,000	98	784,000
Alabama Midland Ry. Co	1st Mtg	2,800,000	91	2,548,000	93	2,604,000
Northeastern R. R. Co	Con Mtg	657,000	95	624,150	100	657,000
Savannah, Fla. & Western R. R. Co	1st Mtg	4,056,000	99	4,015,440	99	4,015,440
Savannah, Fla. & Western R. R. Co	1st Mtg	2,444,000	91	2,224,040	89	2,175,160
Wilmington & Weldon R. R. Co	Gen 1st Mtg	3,062,000	89	2,725,180	90	2,755,800
Wilmington & Weldon R. R. Co	Gen 1st Mtg	988,000	78	781,640	75	709,500
Charleston & Savannah R. R. Co	1st Mtg	1,500,000	106*	1,590,000	106*	1,590,000
Brunswick & Western Ry. Co	1st Mtg	1,407,000	78	1,097,460	79	1,111,530
Norfolk & Carolina R. R. Co	1st Mtg	1,314,000	90	1,182,600	88	1,156,320
Richmond & Petersburg R. R. Co	Con Mtg	300,000	70	210,000	76	228,000
Florida Southern R. R. Co	1st Mtg	2,418,000	70	1,692,600	73	1,765,140
Norfolk & Carolina R. R. Co	2nd Mtg	400,000	85*	340,000	85*	340,000
Wilmington & New Bern R. R. Co	1st Mtg	105,000	78*	82,680	78*	82,680
Atlantic Coast Line R. R. Co. of S. C.	Gen 1st Mtg	5,000,000	74	3,734,780	76	3,835,720
Atlantic Coast Line R. R. Co	1st Con Mtg	50,383,000	75	38,147,250	77½	39,291,667
Atlantic Coast Line R. R. Co	Gen Uni Mtg "A"	22,769,000	73½	16,678,292	75½	17,247,517
Atlantic Coast Line R. R. Co	Gen Uni Mtg "B"	100,000	77*	77,000	77*	77,000
		$ 102,124,000		$ 79,506,882		$ 81,436,294
INCOME BONDS:						
Brunswick & Western R. R. Co		$ 15,000	92½*	$ 13,875	92*	$ 13,800
MISCELLANEOUS OBLIGATIONS:						
A. C. L. R. R. Co.—Convert-Debenture		$ 4,444,855	63	$ 2,800,258	62½	$ 2,778,094
A. C. L. R. R. Co.—New Certificate Indebtedness		135,100	63	85,113	62½	84,457
W. & W. R. R. Co.—New Certificate Indebtedness		600	106*	636	106*	636
		$ 4,580,555		$ 2,886,007		$ 2,863,107
TRUST BONDS:						
Funded Debt—Equipment Obligations		$ 6,629,500	99*	$ 6,563,205	99*	$ 6,563,205
NOTES:						
A. C. L. R. R. Co.—10 Year Secured Notes		$ 6,000,000	99½	$ 5,970,000	101½	$ 6,090,000
		$ 188,131,955		$ 159,595,895		$ 154,056,508
RECAPITULATION						
Capital Stock		$ 68,782,900		$ 64,655,926		$ 57,089,807
Mortgage Bonds		102,124,000		79,506,882		81,436,294
Income Bonds		15,000		13,875		13,800
Miscellaneous Obligations		4,580,555		2,886,007		2,863,107
Trust Bonds		6,629,500		6,563,205		6,563,205
Notes		6,000,000		5,970,000		6,090,000
		$ 188,131,955		$ 159,595,895		$ 154,056,508
NOTE. * No quotation given.						
Miles owned	4,750.85					
Average Value Per Mile				$ 33,593.12		$ 32,427.09
Miles owned in North Carolina	1,039.16					
Value in North Carolina						

48 and complainant avers that the value of said property based upon the average price of said stocks, bonds, certificates of indebtedness and other obligations for the year 1920, would be $159,595,895 and the value of that portion of the property in North Carolina upon a mileage basis is $34,908,626 and that for the year 1921, the value of said property based upon said average price of said stocks and bonds for 1921 is $154,056,203 and that the value of that part of complainant's property in North Carolina upon a mileage basis is $33,696,925.

Complainant therefore avers that under no one of these tests, that is the said capitalization of earnings or the par or market value of stocks and bonds, is the true value of its property arrived at in the assessment herein complained of.

33. Complainant further shows that the so-called franchise tax is not a franchise tax measured by the value of the use of the property, but is in truth and in fact an ad valorem tax based upon the value of the property, and as the said so-called franchise tax is levied only upon railroads, on the assessment of tangible and intangible property for ad valorem purposes, above set forth, the result is that this ad valorem tax is not levied equally upon all the property holders in this State, and is, therefore, contrary to Section 3 of Article 5 of the Constitution of North Carolina, and, by reason of the enforcement thereof, complainant is deprived of the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States. As this so-called franchise tax is 1-10 of 1% of the assessed value of the property, tangible and intangible, for ad valorem purposes, the fixing by the said Commissioner of Revenue of a sum greatly in excess of the true value for ad valorem purposes at which it should be assessed is doubly iniquitous and damaging, because the excessive assessment is also used for the illegal so-called franchise tax. Under this scheme of taxation in North Carolina, complainant's property being assessed at $51,163,717, complainant is required to pay to all counties, cities and towns
49 the assessed rate for that county, city or town just as other property holders, but in addition to this is also required to pay to the state under the guise of a franchise tax 1-10 of 1% upon the same ad valorem value.

34. Complainant further avers that the said so-called franchise tax is not uniform and not levied equally upon corporations, because by Section 82 (3) of the said Revenue Act of 1921, on corporations generally, a tax of one-tenth of one per cent is levied upon the subscribed or issued and outstanding capital stock of such corporations, whereas, by Section 82 (6½) of the Revenue Act of 1921, a tax of one-tenth of the one per cent is levied upon the tangible and intangible value of railroad companies, as ascertained by the Commissioner of Revenue for ad valorem purposes; and, your complainant avers that the unequal assessment as between railroad corporations and other corporations as a basis for the imposition of the tax of one-tenth of one per cent, violates Section 3 of Article 5 of the Constitution of North Carolina and denies to complainant the

equal protection of the law and deprives it of its property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, and constitutes a burden upon interstate commerce in violation of the interstate commerce clause of the Constitution of the United States.

35. Complainant further shows that even if the said so-called franchise tax of 1-10 of 1% is not illegal and void, as a franchise tax, but should be decided by the court to be a valid tax, nevertheless complainant was required to pay for the year 1920 and did pay under protest $50,867.80, being 1-10 of 1% upon the entire assessment and valuation, and will be required to do the same for the year 1921, whereas under the provisions of section 82 (3½) of the Revenue Act hereinbefore referred to, complainant should only be required to pay upon one half of such value for the reason
50 that the capital stock of the complainant allocated to North Carolina amounts to less than one half of the valuation of complainant's property in North Carolina. The said State Tax Commission of 1920 refused, as likewise did the Auditor and State Treasurer, to charge complainant and collect on the basis of one half of its valuation, and will refuse to do so for the year 1921, although such provision is made for other corporations in like situations, thus depriving the complainant of the equal protection of the laws and in violation of the Fourteenth Amendment to the Constitution of the United States, and a violation of the uniformity clause of Section 3 Article 5 of the Constitution of North Carolina. And, complainant prays the Court, if the said so-called franchise tax should be held valid to decree what amount this complainant should pay as such franchise tax; and further, prays that if the Court shall decree that the said tax is illegal and void that the Court will make a decree in this cause, demanding the said State Treasurer to refund to this complainant the amount of said franchise tax paid for 1920 and if the Court shall decree the so-called franchise tax is valid, it will make a decree herein requiring the said State Treasurer to refund to this complainant one half of the amount of said so-called franchise tax paid by this complainant under protest to the said State Treasurer for 1920.

36. Complainant further shows that the assessment of its property in excess of its true value results in erroneous importation of value into the State of North Carolina, and by as much as such erroneous value is imported into North Carolina and taxed, the tax amounts to a direct burden upon interstate commerce and contravenes the Constitution of the United States.

37. Thus this complainant avers that the State of North Carolina has taxed the property of this complainant at its actual value as a going concern by the assessment on which the local taxation is based on the whole property, tangible and intangible, and to this
51 the State adds a so-called franchise tax of 1-10 of 1% on the same assessment, and will on this company's business for the year 1921 assess, and during the year 1922 collect, an additional tax characterized as an income tax of three per cent on net operating

revenue, including revenue derived from interstate commerce. Complainant avers that this system of pyramiding taxes and the entire scheme of taxation amounts to a regulation of commerce between the states, because necessarily a tax of one tenth of one per cent upon the tangible and intangible property of this complainant and a further tax of three per cent upon its net Revenue, including revenue from interstate commerce, are taxes upon interstate commerce, the property both tangible and intangible having already been taxed at its full value. This scheme of taxation, considered as a whole, necessarily levies a tax and burden on the interstate commerce of Complainant and violates Section 8 of Article 1 of the Constitution of the United States.

38. Complainant will owe to the various counties and municipalities herein mentioned, the legally enacted tax upon whatever may be found to be the legal assessment for taxes upon its property in the State of North Carolina; and, inasmuch as complainant realizes the necessity to the counties and municipalities named herein of collecting the legally assessed taxes for the purpose of carrying on the public business, and, as this complainant has no desire to embarrass the said counties and municipalities in the collection of such revenue as they may be entitled to, it expresses a willingness to pay to such counties and municipalities such an amount as this court may determine and upon such plan as the court may devise for the protection of the complainant against the final payment of an excessive and illegal assessment.

Complainant further expresses a willingness to pay to the State of North Carolina the said tax of one-tenth on one per cent, pending the determination by this Court of the legality of the said
52 assessment and tax, if some plan can be devised whereby, in the event complainant's contentions herein are sustained, said tax may be refunded to this complainant.

39. Complainant avers that as the said assessment has been certified by the Commissioner of Revenue to the State Auditor and to the several counties and municipalities in the State of North Carolina in which complainant's lines are subject to tax, it has, therefore, joined as parties defendant hereto the State Auditor and the State Treasurer, who under the law respectively charge for collection and receive payment of the said franchise tax and the sheriff for each county in which complainant has property, upon whom the law places the duty of collecting the county taxes levied upon said illegal assessment and the city or town tax collector of each incorporated city or town in which complainant has property, upon each of whom the law imposes the duty of collecting the city or town taxes on said illegal assessment and the tax collectors for special graded or other school districts and township road districts upon whom the law imposes the duty of collecting special taxes levied for school and road purposes, in said districts; and the Attorney General and Assistant Attorney General of North Carolina, whose duty it is to enforce the laws of the State of North Carolina and the penalties provided by

such laws, and unless said officers are joined in this suit, complainant will be required to institute a multiplicity of suits, all of which will involve the same and the one question of the validity of the said assessment made by the Commissioner of Revenue and the validity of the said so-called franchise tax and the said so-called income tax; as the assessment is made as an entirety by the Commissioner of Revenue and by him apportioned to the several counties and municipalities of this State, the authorities of these counties and municipalities are not empowered to change the same, but are required by law to assess against this complainant on an apportionment of the said invalid assessment so certified to said Counties or Municipalities, the tax imposed for such counties and municipalities and levied on other property, and unless the tax collecting officers of the several counties and municipalities and the said State officials, defendants herein, are restrained, they will proceed to collect said illegal taxes upon said illegal assessment, which taxes become due on the first Monday in October, 1921. Complainant further shows that under the law of North Carolina the taxes so assessed in behalf of the State, Counties, Towns, Cities and Special Districts, if not paid, will become a first lien upon the property of complainant in North Carolina and will be a cloud upon the title to its property, and if not paid as assessed, and within the time limited by said law of North Carolina, the penalties as provided by law will attach and its property will be sold for the taxes, to the irreparable damage of complainant, for which it has no adequate remedy at law.

53

Prayer.

Wherefore, and for as much as Complainant is remediless in the premises, according to the common law, and remediable only in equity, and that complainant may not be subjected to a multiplicity of suits, which would otherwise develop, and may not suffer irreparable injury and damage, and may not have its property taken from it without due process of law, may not be denied the equal protection of the laws and may carry on its interstate commerce business untrammeled by the burdens imposed by the laws of North Carolina, may be permitted to pursue and carry on its business without unlawful hindrance and destruction, and that the railroad operated by complainant in the State of North Carolina as aforesaid, and its property, may not be subjected to illegal liens, complainant prays for a writ of subpœna to issue against the defendants and each and every one of them named and described as aforesaid to appear and full and true answer make to this bill of complaint, and that the said defendant, Augustus D. Watts, Commissioner of Revenue, state in his answer the method whereby he reached the so-called final assessment, not under oath, answer under oath being hereby waived, and the said defendants and each and every one of them be enjoined by final decree and meanwhile by preliminary injunction as follows, to wit:

54

That Baxter Durham, Auditor of the State of North Carolina, be enjoined and restrained from charging complainant for collection

and that Benjamin R. Lacy, as State Treasurer, be enjoined from charging and collecting from complainant the so-called franchise or privilege tax on the assessment herein complained of, until the final order of this Court.

That each of the defendant Sheriffs aforesaid of the respective counties be enjoined and restrained from collecting or taking any steps to collect from complainant upon the proportion of said assessment apportioned to and certified by the Commissioner of Revenue as being apportioned to his county, any and all taxes levied thereon for County, Township or other taxing district purposes, until the final order of this Court.

That each of the defendant city or incorporated town tax collectors of the respective cities and towns aforesaid, be enjoined and restrained from collecting or taking any steps to collect from complainant upon the proportion of the said assessment apportioned to and certified down by the Commissioner of Revenue to the respective Mayors of said cities and towns as being apportioned to his said city and town any and all taxes levied thereon for the city, town or other municipality purpose until the final order of this Court.

That each of the defendants above named, tax collectors for special taxes, be restrained and enjoined from collecting or taking any steps to collect from the complainant upon the proportion of the said assessment apportioned to their respective special tax districts, any taxes levied thereon for said tax districts or for any purposes
55 therein, until the final order of this Court.

That on final hearing the Commissioner of Revenue be enjoined and commanded to cancel the illegal assessment aforesaid and to withdraw from the several chairmen of the County Commissioners and Commissioners of each City or incorporated town to which certificate of a proportion thereof has been made; that the said assessment be declared to be illegal and void, and that the statutes of North Carolina mentioned above, providing for said illegal taxes, be declared to be in violation of the constitutional rights of the complainant, as set forth in the bill, and null and void, and for all such other, further, general and special relief as in equity it may be entitled to.

This is the first application for injunction in this cause.

P. A. WILLCOX,
THOS. W. DAVIS,
Solicitors for Complainant.

GEO. B. ELLIOTT,
SKINNER & WHEDBEE,
Of Counsel.

STATE OF NORTH CAROLINA,
County of New Hanover:

R. D. Cronly being duly sworn, deposes and says that complainant, Atlantic Coast Line Railroad Company, is a corporation and that he is one of its officers, to-wit, Assistant Secretary; that he has read the foregoing bill of complaint and knows the contents thereof; that

the same is true of his own knowledge, except as to those matters therein set forth on information and belief and that as to
56 those matters he believes it to be true.

R. D. CRONLY. [L. S.]

Sworn to and subscribed to before me, This 24th day of September, 1921.

[Seal of State of North Carolina, County of New Hanover, B. B. Reynolds, Notary Public.]

B. B. REYNOLDS,
Notary Public.

My Commission Expires January 31st, 1922.

57 *Subpœna.*

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

District Court, Fourth Circuit, at Raleigh.

The United States of America to Augustus D. Watts, Commissioner of Revenue of N. C., Raleigh, N. C.; Benjamin R. Lacy, State Treasurer of N. C., Raleigh, N. C.; Baxter Durhan, State Auditor of N. C., Raleigh, N. C.:

We command you, and every of you, that you appear before the Judges of our District Court of the United States of America, for the Eastern District of North Carolina, at the office of the Clerk of said Court, in the City of Raleigh, in said District, on the 17th day of October, next, to answer the Bill of Complaint of the Atlantic Coast Line Railroad Company, a citizen and resident of the State of Virginia, filed in the Clerk's office of said Court, in said City of Raleigh, then and there to receive and abide by such Judgment and Decree as shall then or thereafter be made, upon pain of Judgment being pronounced against you by default.

To the Marshall of the Eastern District of North Carolina to execute.

Witness, the Hon. Wm. Howard Taft, Chief Justice of the Supreme Court of the United States, at Raleigh, in said District, the 27th day of Sept., 1921, and in the 146th year of the Independence of the United States.

Issued the 27th day of Sept., 1921.

S. A. ASHE,
Clerk U. S. District Court.

The within-named defendants are notified that unless they enter their appearance in the Clerk's office of the District Court at Raleigh and file their answer, or other defense, on or before the 20th day

after service hereof, excluding the day of service, the bill filed herein will be taken as confessed and a decree entered accordingly.

S. A. ASHE,
Clerk U. S. District Court.

58 *Marshal's Return on Subpœna.*

Received at Raleigh, 9/27, 1921. Executed at Raleigh, 9/27, 1921 by serving the within Subpœna and leaving copy with A. D. Watts, B. R. Lacy, Baxter Durham.

GEO. H. BELLAMY,
U. S. Marshal,
Per B. H. MEADOWS,
Dep.

Marshal's Fee, $6.00.
Marshal's Cost, —.

I certify that the within is entered and filed this day.
Sep. 29, 1921.
S. A. ASHE,
Clerk.

59 *Subpœna.*

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

District Court, Fourth Circuit, at Raleigh.

The United States of America to James S. Manning, Attorney General of N. C., Raleigh, N. C.; Frank Nash, Assistant Attorney General of N. C., Raleigh, N. C.:

We command you, and every of you, that you appear before the Judges of our District Court of the United States of America, for the Eastern District of North Carolina, at the office of the Clerk of said Court, in the City of Raleigh, in said District, on the 17th day of October, next, to answer the bill of complaint of the Atlantic Coast Line Railroad Company, a citizen and resident of the State of Virginia filed in the Clerk's office of said Court, in said City of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of Judgment being pronounced against you by default.

To the Marshall of the Eastern District of North Carolina to Execute.

Witness, the Hon. Wm. Howard Taft, Chief Justice of the Supreme Court of the United States, at Raleigh, in said District, the 27th day of Sept., 1921, and in the 146th year of the Independence of the United States.

Issued the 27th day of Sept., 1921.

S. A. ASHE,
Clerk U. S. District Court.

The within-named defendants are notified that unless they enter their appearance in the Clerk's office of the District Court at Raleigh and file their answer, or other defense, on or before the 20th day after service hereof, excluding the day of service, the bill filed herein will be taken as confessed and a decree entered accordingly.

S. A. ASHE,
Clerk U. S. District Court.

60 *Marshal's Return on Subpœna.*

Received at Raleigh, 9/27-1921. Executed at Raleigh, 9/27-1921, by serving the within Subpœna and leaving copy with Jas. S. Manning, Frank Nash.

GEO. H. BELLAMY,
U. S. Marshal,
By B. H. MEADOWS,
Dep.

Marshal's Fee, $4.00.
Marshal's Cost, $—.

I certify that the within is entered and filed this day.
Sep. 29, 1921.
S. A. ASHE, *Clerk.*

61 *Agreement for Service of Subpœna.*

Filed Oct. 3, 1921.

State of North Carolina,

Department of Attorney General,

Raleigh.

James S. Manning, Attorney General.

Frank Nash, Assistant Attorney General.

October 3, 1921.

Hon. S. A. Ashe, Clerk Federal Court,
Raleigh, North Carolina.

DEAR SIR:

Confirming my conversation with you over the phone, counsel for the State and other defendants in Atlantic Coast Line Railway Company vs. Watts, et als., consent that mailing copies to the various sheriffs and tax collectors shall be a sufficient service, and instructed me further to communicate this fact to Mr. P. A. Willcox, General Counsel of the A. C. L. R. R. Co., Florence, S. C.

Yours very truly,
(S.) JAMES S. MANNING.

62 *Clerk's Notation on Subpœna.*

In accordance with the foregoing letter, the subpœna was served upon all of the sheriffs and tax collectors, parties defendant in this suit, by mailing copies thereof by registered mail, addressed to each of the said sheriffs and tax collectors.

S. A. ASHE,
Clerk.

63 *Application for Interlocutory Injunction.*

Filed Sept. 27, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

Comes the above-named plaintiff and shows the Court:

That it has instituted in this Court by bill of complaint an action against A. D. Watts, as Commissioner of Revenue of the State of North Carolina, and other defendants as shown in said bill which is now referred to and made a part of this application, the object and purpose of the action being to secure from this Honorable Court an order enjoining preliminarily and perpetually the defendants, who are tax assessing, collecting, and enforcing officers of the State of North Carolina and its municipal subdivisions, from collecting or instituting proceedings to collect State, county, municipal, or other taxes levied upon or based upon an illegal overassessment of plaintiff's property, made and certified to them by the Revenue Commissioner of North Carolina, which assessment is contrary to the Constitution and laws of North Carolina and the Constitution of the United States. The bill alleges and sets forth the grounds of unconstitutionality of the assessment and of the statutes of North Carolina under which said invalid assessment was made and under which the illegal taxes will be collected by the defendants named in said bill unless restrained by this Honorable Court, all of which is more fully alleged, set out and explained in the bill of complaint filed herein.

Plaintiff alleges that the franchise tax levied under Section 82 of the Revenue Act of North Carolina, ratified March 8th,
64 1921, is unconstitutional and that no tax can be levied thereon under any assessment, and the action of the State's tax col-

lecting officer in the execution of said void statute is sought to be enjoined. Said tax is due and payable on or before the 15th day of October, 1921, and if not paid by December 1, 1921, a penalty of ten per cent (10%) is added to such tax.

The ad valorem taxes levied by the counties on said illegal assessment is due on the first Monday in October, and unless paid, the Sheriff may levy and sell property of this plaintiff after November 1, 1921.

The municipal and other taxes levied upon said illegal assessment will become due and the collection thereof will be undertaken prior to the determination of this cause unless the tax collecting officers are restrained.

Wherefore, application is made under Section 266 of the Judicial Code for an interlocutory injunction as prayed for in said bill, and this Court is petitioned to call to his assistance to hear and determine this application two other judges, and that the statutory notice of the hearing of this application be given the Governor and the Attorney General of the State of North Carolina and each of the defendants to the said bill, and an order issue requiring the defendants to show cause at the time and place to be fixed by this Court according to law, why said interlocutory injunction should not issue as prayed for.

This application is based upon the verified bill of complaint on file herein.

P. A. WILLCOX,
Attorney for Plaintiff.

65 *Notice of Hearing of Application for Interlocutory Injunction under Judicial Code, Section 266.*

Filed Sept. 27, 1921.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

To Honorable Cameron Morrison, Governor of the State of North Carolina; Honorable James S. Manning, Attorney General of the State of North Carolina; Honorable A. D. Watts, Revenue Commissioner of the State of North Carolina; Honorable Baxter Durham, Auditor of the State of North Carolina; Honorable Benjamin R. Lacy, Treasurer of the State of North Carolina, and to each of the defendants named in the above bill:

You, and each of you, are hereby notified that the Atlantic Coast Line Railroad Company, complainant, has filed its verified bill of

complaint in the District Court of the United States for the Eastern District of North Carolina against A. D. Watts, Revenue Commissioner, et al., praying an injunction against the named tax assessing, collecting and enforcing officers of the State of North Carolina and its municipal subdivisions from collecting or instituting proceedings to collect, State, county, municipal or other taxes levied upon or based upon the alleged illegal over-assessment of plaintiff's property for the year 1921, made and certified to by the Revenue Commissioner of the State of North Carolina, and also praying that certain tax laws of North Carolina be declared unconstitutional as will appear from the bill filed herein.

In this cause plaintiff has made application for an interlocutory injunction under Section 266 of the Judicial Code of the United States. The application for such interlocutory injunction will
66 be heard in the United States District Court, the city of Raleigh, North Carolina, on the 5th day of October, 1921, at 11 o'clock A. M. and you, and each of you, are notified to appear at said time and place and show cause, if any, why the interlocutory injunction prayed for should not be granted.

Done in open court this 26th day of September, 1921.

H. G. CONNOR,
Judge.

67 *Marshal's Return on Notice of Hearing.*

Filed Sept. 29, 1921.

Received at Raleigh 9/27-'21. Executed at Raleigh 9/27-'21 by serving the within Order and leaving copy with Hon. Cameron Morrison, J. S. Manning, A. D. Watts, Baxter Durham, B. R. Lacy.

GEO. H. BELLAMY,
U. S. Marshal,
Per B. H. MEADOWS,
Dept.

Marshal's Fees, $10.00.

I certify that the within is entered and filed this day.

Sep. 29, 1921.

S. A. ASHE,
Clerk.

68 *Order of District Judge on Application for Interlocutory Injunction.*

Filed Sept. 27, 1921.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

The application for an interlocutory injunction was presented to me this 26th day of September, 1921; and having read and considered the verified bill filed in this cause, and the application for a hearing for interlocutory injunction under Section 266 of the Judicial Code, and being advised that for the reasons set forth in said application and upon the grounds stated therein and in the verified bill, plaintiff is entitled to have its application heard under Section 266 of the Judicial Code:

It is ordered, that the application be filed and a hearing of the application for an interlocutory injunction be had and proceeded with in accordance with Section 266 of the Judicial Code as amended by Act of Congress approved March 14, 1913, and such hearing is set down for October 5, 1921, at the United States Court rooms in the city of Raleigh North Carolina, at 11 o'clock a. m.

It is further ordered, that notice of said hearing, not less than five days, shall be given to the Governor and the Attorney General of the State of North Carolina, and to each of defendants to this suit. And I hereby call to my assistance at said hearing of said application the Honorable Edmund Waddill, Jr., Circuit Judge of this Circuit, and the Honorable James E. Boyd.

This September 26th, 1921 at Wilson, North Carolina.

H. G. CONNOR,
District Judge.

69 *Agreement for Hearing at Greensboro.*

Filed Oct. 5, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

AUGUSTUS D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

The counsel for defendants, without waiving any of the rights of defendant except as to the place of hearing, hereby consent that the above cause may be heard at Greensboro, North Carolina, in the Western District of North Carolina, at the same time and before the same judges, at which and before whom the Southern Railway Company vs. the same defendants, now set down for hearing on October 6th, 1921, is heard.

JAMES S. MANNING,
LOCKE CRAIG,
Solicitors for Defendants.

70 *Motion to Dismiss.*

Filed Oct. 6, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

ATLANTIC COAST LINE RAILROAD COMPANY, Plaintiff.

vs.

A. D. WATTS et al. Defendants.

Motion.

Comes now the defendants, A. D. Watts, and others named as defendants in the complaint filed in this suit, and move the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss this suit, because it is conceded in the com-

plaint that the plaintiff owes and is liable to pay the defendants taxes on property situated within the State of North Carolina and in the several counties, cities and towns and taxing districts named in the complaint, property of the value of $41,150,361.90 on which said property the plaintiff, as it appears in its said complaint, has not paid or tendered payment of the taxes due thereon.

(S.) JAMES S. MANNING,
Attorney General of North Carolina,
(S.) FRANK NASH,
Assistant Attorney General,
Solicitors for the Defendants.

(S.) WM. P. BYNUM,
(S.) GEORGE H. BROWN,
(S.) LOCKE CRAIG,
Of Counsel.

71 *Order Denying Motion to Dismiss.*

Filed Oct. 6, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al.

The defendants this date moved the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss the suit upon the grounds stated in said motion.

Upon consideration thereof, the Court denies the motion to dismiss the suit.

It appearing to the Court that the application for a preliminary injunction has been continued by agreement of parties, which agreement has been filed in this cause, and it further appearing that by said stipulation the plaintiff agrees to pay the taxes which may come due as they come due to the counties, cities, towns, and other taxing districts of the State of North Carolina on the valuation stated in the stipulation filed herein this date;

EDMUND WADDILL, JR.,
U. S. Circuit Judge.
JAS. E. BOYD,
H. G. CONNOR,
U. S. District Judge.

72 *Stipulation of Counsel & Interlocutory Order.*

Filed Oct. 6, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue et al.

The following stipulation is entered into between counsel for plaintiff and the Attorney General of North Carolina and his associates as counsel for all defendants, for each of which defendants they have entered an appearance:

It is agreed that in order that the defendants may have sufficient time in which to prepare the defense, the application for an interlocutory injunction under Section 266 of the Judicial Code is, with the consent of Court, continued until such date as the Court may select following January 1, 1922.

The foregoing continuance being agreed upon and it appearing that before the hearing and determination of the application certain taxes will come due to the State of North Carolina and to the counties, cities, towns, and other taxing districts; Therefore it is agreed by the Attorney General of North Carolina and his associates as representing all of the defendants, that if the Atlantic Coast Line Railroad Company pays the taxes it agrees hereinafter to pay, then no further or other taxes sought to be enjoined in the bill will be demanded or collected or any action or suit of any character begun to collect or any penalty assessed for the non-payment thereof, until the further orders of the Court or pending this action.

The Atlantic Coast Line Railroad Company agrees that it will pay when due in accordance with the laws of the State of North Carolina to all counties, cities or towns, special school districts, or other special school or other special taxing district of the State, on its proper proportionate share of an agrregate ad valorem assessment against plaintiff of $34,645,345.

The Attorney General of North Carolina agrees that he will take all necessary action to have the Commissioner of Revenue certify to the several counties and taxing districts of North Carolina their proper proportion of an assessment of $34,645,345. as soon after the date hereof as may be practicable and, if possible, within such period as will enable the Railway Company to take advantage of any discount that it may be entitled to under the law.

It is agreed between the parties that the Atlantic Coast Line Rail-

road Company is not to demand a receipt in full for its 1921 taxes in consideration of the payment it makes, but is to receive a receipt for the amount of the taxes paid, and the amount of taxes so paid shall be in full of said taxes due if an assessment shall be finally fixed at a sum not in excess of $34,645,345, or such payment shall be a credit upon all taxes that may be due if the assessment of plaintiff's property for ad valorem tax purposes for the year 1921 shall be finally fixed in excess of said $34,645,345.

73 It is further agreed that if defendants desire to file an answer prior to the hearing of the application for an interlocutory injunction they shall file such answer or any motion or other pleading they desire to file by December 1, 1921, and furnish opposing counsel with copies thereof. Plaintiff shall have until December 24th, 1921, to file any motion or reply pleading and any affidavits in support of bill or motion for interlocutory injunction or in reply and furnish opposing counsel with copies thereof. Defendants shall have until January 10, 1922, to file affidavits in support of their answer or in reply and plaintiff shall have until hearing to file reply affidavits.

This stipulation to become effective and filed in this Court upon approval hereof by the Court.

At Greensboro, N. C., this 6th day of October, 1921.

THOS. W. DAVIS,
P. A. WILLCOX,
Counsel for Complainants.
JAS. S. MANNING,
Attorney General of North Carolina;
GEO. H. BROWN,
WM. P. BYNUM,
KING, SAPP & KING,
Counsel for Defendants.

Approved October 6, 1921.
EDMUND WADDILL, JR.,
U. S. Circuit Judge.
JAS. E. BOYD,
H. G. CONNOR,
U. S. District Judges.

Answer.

Filed Nov. 30th, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY

against

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et als.

74 Answer.

Come now A. D. Watts and the other defendants in the above-entitled suit and, answering the complaint filed by the plaintiff therein, say:

1. The allegations of article one are admitted, except the allegation that the plaintiff is not a citizen of the State of North Carolina, which is denied; on the contrary it is averred that the plaintiff was at all times mentioned in the complaint, and is now, a corporation duly created and existing under and by virtue of the laws of North Carolina, and by said laws was consolidated with the corporations of North Carolina and Virginia hereinafter mentioned, and is a citizen of North Carolina and of the Eastern District thereof, with its principal place of business at Wilmington in said State.

The plaintiff company was consolidated with the Wilmington and Weldon Railroad Company, Petersburg Railroad Company, and other companies chartered under laws of North Carolina, said consolidation being had under the general authority of this State as follows, Chapter 294 of the Private Laws of 1893, which act contained this proviso: "Provided, that this act shall not have the effect of ousting the jurisdiction of the courts of this State over causes of action arising within the State;" Chapter 105, Private Laws 1899, which contained these provisions:

75 Provided, further, that any and all corporations consolidated, leased or organized under the provisions of this act shall be domestic corporations of North Carolina and shall be subject to the laws and jurisdiction thereof.

"Sec. 2. That authority is hereby given to the said Wilmington and Weldon Railroad Company at any meeting of its stockholders, by a majority vote thereof, to change its name to the Atlantic Coast Line Railroad Company of North Caroilna."

At the same session of the Legislature, Chapter 77, Public Laws of 1899, the following statute was enacted:

An act to ratify the consolidation of the Petersburg Railroad Company with the Richmond and Petersburg Railroad Company, under the name of the Atlantic Coast Line Railroad Company of Virginia, and to incorporate the said Atlantic Coast Line Railroad Company of Virginia in North Carolina.

Whereas the Richmond and Petersburg Railroad Company, a corporation created by the laws of the State of Virginia, has, by virtue of the power given by an act of the General Assembly of Virginia, approved March the first, eighteen hundred and ninety-eight, acquired the ownership of all the property, rights, and franchises of the Petersburg Railroad Company, including that portion thereof which is located in this State, and the said Richmond and Petersburg Railroad Company and Petersburg Railroad Company have become consolidated under and upon the terms of said act, and such consolidated company has, by vritue of the authority given in said act changed its name to the Atlantic Coast Line Railroad Company of Virginia: now, therefore,

The General Assembly of North Carolina do enact:

Section 1. That the purchase by the said Richmond and Petersburg Railroad Company of that portion of the roadbed and other property, rights, and franchises of the Petersburg Railroad Company which are in the State of North Carolina, is hereby ratified and approved.

76 Sec. 2. That the Atlantic Coast Line Railroad Company of Virginia, a corporation created by and existing under the laws of the State of Virginia, is hereby created a body politic and corporate in the State of North Carolina under and by the aforesaid name of the Atlantic Coast Line Railroad Company of Virginia, and by such name may sue and be sued, may adopt a common seal and change the same at will, and have all the general powers and be subject to all the general restrictions granted and imposed by the laws of this State to and upon railroad companies.

Sec. 3. The said Atlantic Coast Line Railroad Company of Virginia is hereby authorized and empowered to maintain and operate the railroad which formerly belonged to the Petersburg Railroad Company in this State, and is hereby given all the rights, powers, and privileges, and made subject to all the restrictions, except the restriction as to the term to which its charter is limited, granted and imposed by the charter of the said Petersburg Railroad Company or any amendments thereto in the State of North Carolina.

Sec. 4. The powers given by this act to the Atlantic Coast Line Railroad Company of Virginia are granted upon the express condition that the property of the said Atlantic Coast Line Railroad Company of Virginia in this State shall always be liable to taxation under the Constitution and laws of this State, and that said company shall be subject to the tariffs, rules and regulations prescribed by the Board of Railroad Commissioners.

Sec. 5. This act shall be in force from and after its ratification.

The plaintiff accepted the benefits conferred upon it by the private acts above referred to, and also those contained in the above-quoted act of 1899, the railroads in North Carolina permitted by the General Assembly to consolidate with it having become under these acts a part of its system, and thus absorbed by it; and said plaintiff cannot now be heard to say that it is not bound by the restrictive provisions while it holds to the benefits conferred by those acts.

Since the enactment of the statutes above mentioned and the acceptance by the plaintiff of the benefits thereunder, it has
77 been uniformly held by the Supreme Court of North Carolina to be a corporation of this State.

The allegations of article one as to the mileage of the plaintiff in this State is admitted, except that the allegation therein that the mileage of railroad owned, operated, leased and controlled by the plaintiff in North Carolina is 1,043.79 miles is true only as to the first main lines of the plaintiff's roads in this State and does not include the mileage of second main lines and sidetracks, which, added to the mileage of the first main lines, increase the mileage of lines of railroad owned, operated, leased and controlled by the plaintiff in this State to 1,419.65 miles instead of 1,043.79 miles. Nor does this latter figure include the so-called independent lines returned and reported by the plaintiff to the Revenue Commissioner as required by law, all or a majority of the stock of which is owned by the plaintiff, thus giving it absolute control of those lines also. The mileage of these last named lines is 199.76 miles, which added to the mileage of the other lines, makes a total mileage of railroad owned, operated, leased and controlled by the plaintiff in North Carolina of 1,619.41 miles. The plaintiff has a double tracks on its main line running from Richmond, Virginia, through the State of North Carolina to Florence, South Carolina.

2. The allegations of article two are admitted, but the name of the defendant Watts is Alston D. instead of Augustus D., as alleged.

3. The allegations of article three are denied, except it is admitted that this is a suit in equity, and that the amount in controversy, exclusive of interest and costs, exceeds the sum and value of three thousand dollars.

4. The allegations of article four are admitted.

5. The allegations of article five and the subsections thereof are admitted, except as hereinafter stated.

Section 64 of the Machinery Act of 1921, referred to in subsection (*e*) of article five, did not make it the duty of the
78 Commissioner of Revenue to do the things therein stated, but made it the duty of the State Tax Commission. Subsequently, there was enacted a separate statute, ratified March 8, 1921, being Public Laws, Session 1921, page 388, whereby the powers and duties

of the State Tax Commission were transferred to and imposed upon a newly created officer to be called the Commissioner of Revenue. That statute, however, and the said Section 64 of the Machinery Act of 1921, of which it was amendatory, did not require the Commissioner of Revenue to assess the properties of railroads for taxation for the year 1921 or for any year thereafter until 1924. The State Tax Commission had made the assessment of railroad properties in North Carolina for taxation for 1920, and the said assessment had been approved by the General Assembly of North Carolina in its Extra Session of 1920, Public Laws 1920, Chapter 1, and adopted as the basis for taxation for the years 1920 to 1923, inclusive. The only power with reference to assessments of railroad properties, prior to 1924, given to the Commissioner of Revenue by the Public Laws of 1921, was the power to review the State Tax Commission's assessment of railroad properties, given by the Machinery Act of 1921, Section 28 (*g*).

The said section 65 of the Machinery Act referred to, and the proviso thereof quoted in subsection (*f*) of article three of the complaint, is the statute particularly controlling the assessment for taxation of the properties of railroads doing interstate commerce, operating both within and without the State.

Section 82 (6½%) of the Revenue Act of 1921, referred to and quoted in subsection (*g*) of article three of the complaint, was first enacted by the General Assembly in the Extra Session of 1920, Public Laws 1920, Chapter 1, Section 7 (*d*), and was carried forward without change in the said Revenue Act of 1921. The said Section 82 (6½) was a substitute for Sections 77 and 78
79 of the Revenue Act of 1919, which imposed a privilege tax on railroads for the privilege of doing intrastate commerce within North Carolina, based on gross earnings per mile within the State. This tax levied by the said Sections 77 and 78 of the Revenue Act of 1919 had existed in the laws of North Carolina for many years, in addition to ad valorem taxation. The said Section 82 (6½) substituted for the old privilege tax based on gross earnings per mile a new form of privilege or franchise tax upon all railroads, for the privilege of doing intrastate business within North Carolina, based on the total properties of each said railroads within the State as assessed under the Machinery Act for ad valorem property taxation.

It is admitted that Section 82 (3½) of the Revenue Act of 1921 is as quoted in subsection (*h*) of article five of the complaint, but it is denied that the same has any application to railroad corporations. It applies only to those corporations upon which are levied the special privilege tax based on capital stock provided for in Section 82, Subsections 1, 2, 3, 4, 5, 6, 7, 8, and 9, and has no application to the franchise or privilege tax on railroads provided for by Section 82 (6½), as hereinafter alleged.

The allegations of subsection (*h*) of article five, as to income tax against railroads, are admitted; but it is alleged that the said income tax is not only levied upon railroads, but is also levied in the same way upon all corporations doing business in North Carolina, foreign

and domestic, railroad corporations and others, equally and without discrimination.

6. The allegations of article six are admitted.

7. The allegations of article seven are admitted.

8. The allegations of article eight are admitted, but the defendants aver that the plaintiff had no legal grounds for making such protest. Its taxes paid in North Carolina in 1920 were actually less by more than one-third than those paid in by it in 1919 before the revaluation and reassessment were made, the amount of the
80 taxes paid by the plaintiff for all purposes to the State, counties, cities and towns in North Carolina being for the year 1919, $680,811.89, while for the year 1920 they were only $489,-686.79.

9. The allegations of article nine are admitted, except as to the name of Commissioner of Revenue, which is Alston D. Watts instead of Augustus D. Watts.

10. The allegations of article ten are admitted.

11. The allegations of article eleven are admitted; but the defendants aver that the action of county boards of review referred to applied only to real property in general, including real property of railroads and of the plaintiff laying off the right of way, but not to their roadbed and other property used in their daily operation.

12. Defendants are informed and believe that the allegations of article twelve are true.

13. The defendants are informed and believe that the allegations of article thirteen are true.

14. The defendants are informed and believe that the allegations of article fourteen are true.

15. The defendants are informed and believe that the allegations of article fifteen are true.

16. Answering the allegations of article sixteen, the defendants deny that the Commissioner of Revenue made any assessment of the property of the plaintiff in North Carolina for 1921. It is admitted that by an addition to the assessment of strictly railroad properties of the plaintiff made by the State Tax Commission in 1920 of values assessed by local assessors on properties of the plaintiff lying off the right of way, the total assessment of the properties of the plaintiff, both the apportionable railroad properties and the properties off the right of way locally assessed, was fixed at $51,163,717, and that that figure is in excess of the total assessment for 1920, $50,867,800, by the amount of $296,917. It is admitted that the figure of $51,163,-717 for 1921 is erroneous to the extent of $295,917, and
81 should be corrected by the deduction from it of that amount so erroneously included in the assessment of apportionable railroad properties.

This error arose from the fact that in 1920 in the returns made by the plaintiff to the State Tax Commission and upon which the State Tax Commission assessed the plaintiff's railroad property, the plaintiff itself, through confusion or misunderstanding, included certain items of property in Edgecombe and New Hanover counties which were properties lying off the right of way, not railroad property, and which therefore should have been assessed by local assessors. These properties increased the amount of the assessment of the plaintiff's railroad properties apportionable to the counties through which the plaintiff's railroad runs. In 1921 these local properties were also assessed by local assessors. The Revenue Commissioner brought forward for 1921 the assessment of plaintiff's railroad properties as the same was made by the State Tax Commission for 1920, which assessment as hereinbefore stated contained also these items of local property. The result was that these properties were assessed twice, locally and as a part of the assessment of railroad property, for the year 1921, and this amount of $295,917 should therefore be deducted from the total assessment of plaintiff's railroad properties apportionable to counties.

This error or confusion for 1921 was only called to the attention of the Commisisoner of Revenue a short time before this suit was instituted, and it was agreed by the office of the Commissioner of Revenue that it should be corrected or adjusted in this litigation.

17 The allegations of article seventeen are denied, except that the Commissioner did give the plaintiff a hearing as alleged. The defendants aver that the Commissioner of Revenue gave to the plaintiff the benefit of the same percentage of reduction allowed in the respective counties to other persons and corporations upon all of the
82 real property of the plaintiff lying off its right of way and not used by it in its daily operations for purposes of transportation, except as to certain errors or confusions caused by plaintiff's returns hereinafter referred to.

It is admitted that a hearing was had before the Commissioner of Revenue August 16, 1921; but it is denied that facts were adduced before him showing that the assessment of plaintiff's properties in North Carolina for taxation was unfair or discriminatory; that it would be taking the property of the plaintiff without due process of law, or that it would be denying to the plaintiff the equal protection of the law, or that it was not uniform, or that it was not made in accordance with Chapter 38 of the Public Laws of 1921, or that it should be reduced in order to equalize the value of the plaintiff's property with that of other persons and corporations assessed for taxes for the year 1921 under the laws of North Carolina; and it is further denied that such facts existed.

Further answering article seventeen, the defendants aver that the Revaluation Act, Public Laws of 1919, Chapter 84, was passed by the General Assembly of North Carolina for the purpose of making the tax laws of the State accord with Section 3 of Article V of the Constitution of North Carolina by making the ascertainment of the true value in money of all property in the State the basis of assessment for taxation. This law provided for a complete revaluation of all

property, real, personal, and mixed, by local appraisers in the county, and of railroad properties by the State Tax Commission, this new valuation to be used as the basis for computing the ad valorem taxes for the years 1920 to 1923, inclusive, when the same should be approved and the tax rates for the State revised by the General Assembly, and when the tax rates levied by the counties, cities, towns, and special-tax districts should be revised under rules to be laid down by the General Assembly.

The general revaluation of all property in the State was
83 made pursuant to this act. Real estate in general in the State was raised about two hundred per cent in value above the assessments for 1919. Railroad properties in the State were raised by the State Tax Commission under the provisions of the said Revaluation Act only about one hundred per cent above the 1919 assessments. The said revaluation and assessments were thereupon approved and adopted by the General Assembly in the Extra Session of 1920 (August), by Public Laws of 1920, Chapter 1, called the Revenue Act of 1920. By this statute the General Assembly adopted the revaluation assessment as the basis for the levy of taxes for the years 1920 to 1923, inclusive. This act, furthermore, revised the tax rates of the State and authorized and made the rules for the revision of tax rates by counties, cities, towns, and special-tax districts, which revisions were actually made.

The defendants aver that the revaluation had been made at a time when farm products, farm land, and real estate in general were bringing in the market abnormally high prices which at the time were thought to be stable. A sharp period of depression affecting particularly the values of such real estate and products followed almost immediately after the said reassessment under the Revaluation Act and much real property fell in market value below the value at which it had been assessed under the revaluation. It is denied, however, that the 1920 assessment of railroad properties in the State under the Revaluation Act was made at a time when such property was abnormally high, as other property was, and it is denied that any such depression in the market values of railroad system properties followed the said revaluation.

As a result of the condition above described as applied to farm lands and other real estate, there was enacted in the Machinery Act of 1921, Section 28 (*a*) thereof, as quoted in article ten of the complaint, which provided that county boards of commissioners and county boards of appraisers and review, appointed under the
84 Revaluation Act, should sit together jointly as county boards of review to determine if the valuation of real estate in the counties as a whole, as made under the Revaluation Act, was in excess of the fair value of such property at the time of meeting of the said boards of review. It provided that if it should be found that the assessments of real estate were thus excessive, the boards of review should find the average percentage of excess for their respective counties and report the same to the State Tax Commission. It provided that the valuation as assessed under the Revaluation Act and as reduced by this average percentage of reduction should be the value

at which property should be assessed for taxation unless and until changed by the State Tax Commission.

The county boards of review in sixty-seven counties in the State, after due consideration, decided to make reductions and report the same to the State Board of Equalization, pursuant to these provisions. The assessments of value which had been made under the Revaluation Act were reduced by these percentages and the resulting assessments became the assessments for taxation in those counties. Plaintiff's properties lying off the right of way, and which, therefore, were assessed by local assessors as other real estate, and by them reported to the State Board of Equalization, were reduced proportionately along with all other real property in those counties in which such property of the plaintiff was situated and such reductions were allowed, except as to the confusions hereinafter referred to.

Inasmuch as real property in general had been raised by the revaluation assessment to three times the former assessment, and the assessment of railroad properties by the State Tax Commission had been raised to only twice the former assessment; and inasmuch, therefore, as the assessments of real property in general for 1920 were in excess of their true market value, in 1921, and the
85 assessments of railroad properties for 1920 were not in excess of, but were at, their true value for 1921, the Commissioner of Revenue properly refused to make reductions of the said assessment of strictly railroad system property of the plaintiff to correspond with the cuts made by the county boards of review on real property in general.

It is denied that the failure of the Commissioner of Revenue to apply the said reductions to the assessment of plaintiff's railroad property was in any way a discrimination against the plaintiff. It is denied that the causes which brought about a reduction in the market value of real estate in general in the counties in which a reduction was made applied to the plaintiff's railroad property, and it is denied that plaintiff's railroad system property, tangible or intangible, was reduced in value as was real estate in general.

The fall in value of real estate in 1920 and 1921 was due primarily to a radical decline in the price of farm products. Tobacco, cotton, and other large products of North Carolina dropped to phenominally low prices, and the values of farm lands and other real estate, and the rentals therefrom, declined sharply with the said decline of prices. Railroads, however, were not so affected. The same volume of crops was moved by the railroads, although the farmers received greatly reduced prices therefor, and instead of the prices charged by railroads for their services being reduced, the railroads were actually allowed an increase of twenty-five per cent in freight rates and twenty per cent in passenger rates. It is, therefore, denied that the plaintiff should have been given or was entitled to the benefit of any reduction on the assessment of its railroad system property by reason of a decline in value of farm lands and other real property in general, which decline did not apply to railroad property.

It is denied that the values of the plaintiff's railroad properties depend upon the fluctuating values of other property in the State as

affected by temporary advances and declines. It is denied
86 that the business of the plaintiff fluctuates directly or in any corresponding proportion with the values of farm lands, or other real property, or with the prosperity of the State it serves for any one year or temporary period of time. It is denied that the plaintic's property has declined in value since 1920.

18. Answering the allegations of article eighteen, the defendants deny that there was any injustice, unfairness, or discrimination practiced by the Commissioner of Revenue or that any such injustice, unfairness, or discrimination existed in the assessing of the plaintiff's property. The total assessed valuation of real property in Edgecombe County for 1919 was $7,867,565. That assessment was raised under the Revaluation Act to $34,955,056 for 1920. The total assessed value of real estate for Nash County for 1919 was $7,865,680. That assessment was raised under the Revaluation Act to $36,300,096 for 1920. It results that under the Revaluation Act the real properties in these two counties instanced by the plaintiff were raised about four hundred per cent. The defendants aver that subsequent events and the sharp decline in 1921 proved that this increase under the Revaluation Act was excessive. The horizontal reduction of only fifty per cent was then applied to bring the 1920 assessment of the said properties back to its true actual value for 1921. Railroad properties, however, including the plaintiff's, had never been subjected to any such increase under the Revaluation Act. The plaintiff's total properties in North Carolina having been increased only from $34,645,345 for 1919 to $50,867,800 for 1920, and there is, therefore, no comparison to be drawn between the real estate in general and the plaintiff's railroad properties. It is denied that the plaintiff was entitled to any reduction on its assessment for 1920, and that the refusal of the Commissioner of Revenue to make any such reduction was in any way discriminatory or wrongful. It is denied that the plaintiff, as the result of the said assessment for 1921, will
87 pay to Nash or Edgecombe County, or to any other county, any unlawful or excessive tax.

The defendants attach hereto, as Exhibit "A" to this answer, a table showing the comparative assessments for 1919 and for 1920 in all counties in the State.

19. The provisions of Section 62 of the Machinery Act are admitted to be correctly quoted in article nineteen of the complaint.

It is admitted that property off the plaintiff's right of way is shown in returns both of the plaintiff and of local list-takers under the heading "Property outside of the right of way listed with the local list-takers." The defendants deny knowledge or information sufficient to form a belief as to whether the correct assessment of such property for 1920 was $1,677,178, and aver that the figure which the State Tax Commission ascertained from a checking of the confused and conflicting returns of the plaintiff and of local assessors was $1,301,637. There was confusion in the returns to the State Tax Commission and to the Commissioner of Revenue. The Commissioner of Revenue intends, and has always intended, in arriving

at the total value of the property, tangible and intangible, of the plaintiff in the State assessed for ad valorem taxes, to allow as reductions therefrom all reductions made by local assessors under the Act of 1921 on property of the plaintiff lying off the right of way and assessed by local assessors, and as to any such reductions which have been made by local assessors and which have not been deducted from the said total ad valorem assessment upon which the franchise tax is based, he stands ready to make such correction at any time upon proper showing, and offered to make such correction shortly prior to the institution of this suit, and since its institution his office has proposed to the plaintiff that such corrections be made in the course of this litigation.

20. Section 62 (*a*) of the Machinery Act of 1921 is admitted to be correctly quoted in article twenty of the complaint.

88 It is admitted that the Commissioner of Revenue refused to allow any reductions from the value of the plaintiff's railroad property assessed by the State Tax Commission in 1920 to correspond with reductions made by county boards of review on land in general in the counties, and the defendants aver that there was no reason for making such reductions, as hereinbefore alleged, since railroad properties had not fallen in value as had other real property, reference being here made to article seventeen of this answer and to Exhibit "A" attached hereto.

As hereinbefore stated, if the Commissioner of Revenue has failed to allow any reductions made by local assessors on property of the plaintiff lying off the right of way and to apply the same to the total value of plaintiff's property, railroad property and that off the right of way, as assessed for ad valorem taxation, upon which value the franchise or privilege tax is based, he stands ready upon proper showing to make such reduction, and his failure heretofore to do so, if he has so failed, has been due to confusion of the returns made by plaintiff and the local assessors and not to any purpose to refuse to allow such reductions.

It is denied that the illustration given by the plaintiff as to reductions made in Rocky Mount and in Nash and Edgecombe counties on real property in general and on real property of the plaintiff lying off the right of way and assessed by local assessors furnishes any grounds for the plaintiff's argument that the failure of the Revenue Commissioner to allow corresponding reductions on plaintiff's strictly railroad property assessed by the State Tax Commission was discrimination. It is denied that it was discrimination or a denial to the plaintiff of the equal protection of the law or in violation of the Fourteenth Amendment to the Constitution of the United States, or of Section 3 of Article V or of Section 9 of Article 7 of the Constitution of North Carolina. Further answering the allegations of article twenty of the complaint, the defendants refer to article

89 seventeen of this answer and ask that the same be considered as a part of this article.

21. Answering the allegations of article twenty-one of the complaint, the defendants deny that the Commissioner of Revenue has certified to the various counties, cities, and towns any valuation of the plaintiff's property in excess of that certified by the State Tax Commission in 1920. It is admitted, as hereinbefore stated, that there is some confusion in the returns of plaintiff and the assessors, and that some corrections should be made, and the Commissioner of Revenue is ready to make such corrections upon proper showing.

22. The allegations of article twenty-two are denied.

23. It is denied that the Commissioner of Revenue has refused to make any attempt to equalize the value of the plaintiff's property with the property of other persons and corporations. The defendants aver that the value of the plaintiff's property is equalized in that it is assessed for taxation at its true value in money as required by law. As to the allegation that there is no appeal under the laws of North Carolina from the assessment and valuation fixed by the Commissioner of Revenue, the defendants aver that the question of such right of the plaintiff to appeal from an assessment of its properties made by the Commissioner of Revenue never has arisen and cannot arise until the next assessment is made in 1924, since the Commissioner of Revenue has not now and has never had the power or duty to make an assessment of railroad property, but only to review the assessment already made by the State Tax Commission in and for the year 1920. The same law which gave other taxpayers the right to a review of the 1920 or revaluation assessment, gave railroads, including the plaintiff, the right of review before the Commissioner of Revenue, which right of review was granted to the plaintiff.

The defendants further aver that the plaintiff is not without a right of appeal from action of the Commissioner of Revenue; that under the law and procedure of North Carolina the writ of certiorari would lie at the suit of the plaintiff to the said Commissioner of Revenue from the Superior Court of North Carolina, and that by this writ the plaintiff may at any time take up for review any proceedings by the Commissioner of Revenue whereby its legal and constitutional rights may be deemed to be violated. It is denied that anything in the laws of North Carolina constitutes a denial to the plaintiff of the equal protection of the law or a violation of the uniformity clause of the North Carolina Constitution.

90

24. The allegations of article twenty-four are denied.

25. The defendants deny knowledge or information sufficient to form a belief as to what the tax rate for 1921 will be in the said counties. If it be true, as alleged, that the assessment of the plaintiff's property remains practically the same, whereas the assessment of other property is reduced, that is because the value of the plaintiff's property has remained practically the same, whereas the value of other property either had been over-estimated for 1920 or has decreased since then. It is denied that the same causes which brought

about a decrease in value of real estate in the counties in which the reduction was made applied to the plaintiff's railroad property, and it is denied that the decrease in value applies to the plaintiff's railroad properties as it does to real property in general. As hereinbefore alleged in article seventeen, the causes which decreased the values of land as land, did not apply to values of railroad property, and it is denied, therefore, that the reductions referred to were or were intended to be a general scheme of reductions due to general conditions applicable alike to railroad properties and to landed properties, and it is denied that the same should be applied to railroad properties and to the plaintiff's property in particular, as they were applied to real property in general. It is denied that the failure of the plaintiff to receive the benefit of such reductions to any
91 greater extent than the same were actually applied to properties of the plaintiff lying off its right of way, is contrary to any part of the Constituion of North Carolina, or to the Constitution of the United States, or that it denies to the plaintiff the equal protection of the law or takes its property without due process of law.

26. Section 65 of the Machinery Act of 1920 is admitted to be correctly quoted in article twenty-six, and the defendants aver that the said Section 65 and the proviso thereof, constitute the statute particularly controlling the assessment for taxation of the property of railroads doing interstate commerce and operating both within and without the State of North Carolina, such as the plaintiff's railroad.

27. It is denied that the method employed by the State Tax Commission, in arriving at the valuation of the plaintiff's property in North Carolina for the year 1920, was illegal or resulted in the overassessment of the plaintiff's property for taxation under the laws of North Carolina. It is denied that the Commissioner of Revenue unjustly or illegally refused to reduce the said assessment for the year 1921. It is denied that the State Tax Commission used the method of capitalization of the plaintiff's net income for North Carolina, exclusively, in arriving at the said assessment. As required by Section 64 of the Machinery Act, the State Tax Commission in 1920, in determining the value of the tangible and intangible property of the plaintiff for taxation gave due consideration to all those factors, modes and methods therein required to be considered. And as further required by Section 65 of the said Machinery Act, the State Tax Commission also gave due consideration to the character of the roadbed and fixed equipment of the plaintiff in North Carolina; to the number of miles of double track in the said State; to the amount of gross and net earnings per mile of road in the said State; and, to all other factors which would give a greater or less value per mile of road in this State than the average value for the plaintiff's entire system.

92 The State Tax Commission applied the foregoing methods and considered the foregoing factors in arriving at the assessment of the plaintiff's property, as it was required to do by law. It is denied that the method of capitalization of the plaintiff's net in-

come in North Carolina was the exclusive method use by the State Tax Commission. That method was used merely as one consideration in connection with the other considerations, as hereinbefore stated. In the application of that method, in so far as it was applied, it is admitted that the average net income of the plaintiff in North Carolina for the years 1915 to 1919, inclusive, was taken as a basis, and was obtained by deducting from the revenue allocated to North Carolina the average annual taxes paid in that State, and the average annual operating expenses allocated to that State. The defendants aver that the determination of the net income for the State of North Carolina is justly and fairly arrived at by that method. It is admitted that the allocation of operating expenses by the plaintiff to branches or divisions of the plaintiff's railroad and to states is not made with mathematical accuracy. The defendants aver that the allocation of operating revenues to any branch or division of the plaintiff's railroad or to any state is made with mathematical accuracy, and that the allocation of expenses, although it may not be mathematically accurate, is made by the plaintiff itself regularly according to a method devised by the plaintiff; that this method, as defendants are informed, is the most accurate which the plaintiff has been able to devise; that it is impossible to find a method of such allocation which will be absolutely accurate; and that the system used by the plaintiff approximates accuracy.

It is denied that the State laws and regulations of North Carolina requiring reports prescribe the methods of accounting or of allocation of revenues and expenses which the plaintiff shall adopt; the said laws and regulations merely require of the plaintiff reports of gross revenue, gross operating expenses, and net revenue.

93 The plaintiff devises its own methods of allocating these items to obtain the figures required to be reported by the laws of North Carolina. It is denied that under the existing accounting methods of the plaintiff for allocating expenses to North Carolina, operating expenses so allocated are understated and net income overstated. It is admitted that only expenses accruing within that State are charged to State expenses, while some traffic passing through that State is assembled or originates at, and is destined to, terminal points without North Carolina at which large operating expenses accrue, no part of which expenses is apportioned to North Carolina, while the mileage revenue therefrom is apportioned to North Carolina. On the other hand, the defendants aver that an enormous amount of interstate traffic of the plaintiff originates in North Carolina destined to points without the State; that large operating expenses accrue at the points of origin in North Carolina and are wholly apportioned to that State, whereas only a small proportion of the mileage revenue of such shipments is apportioned to North Carolina, and portions of such mileage revenue are apportioned to other states across which such shipments are made without the corresponding allocation to such states of any part of the terminal expenses accruing at the points of shipment in North Carolina. The defendants further aver that the same is true as to large amounts of interstate traffic coming from without North Carolina and termi-

nating within North Carolina. For illustration, Wilson and Rocky Mount are among the largest tobacco markets in the State. Great quantities of tobacco are shipped over plaintiff's line from those and other points destined to points in other states. In the assembling, preparation, and initiating of these shipments there are large terminal expenses at the points of shipment, the whole of which are charged in North Carolina expenses, while North Carolina revenue is credited with only a very small mileage proportion of the entire revenue from such shipments. The same thing is true of
94 large shipments from many points throughout the cotton belt in eastern North Carolina, of shipments of tobacco from various smaller markets, of shipments of fruits and vegetables and of shipments of naval stores and other products of this State over Plaintiff's lines in this State.

Large interstate shipments also come from other states into North Carolina destined to points in this State over plaintiff's lines, as for example, to Wilmington, where they are received both for distribution and exportation from this important port. On such shipments there are large terminal expenses at the point of destination in this State, the whole of which are charged in North Carolina expenses, while North Carolina revenue is credited with a very small proportion of the entire revenue from such shipments.

While terminal points in North Carolina are not concentrated in a few large cities like Savannah or Richmond, they are widely spread throughout all that part of the State served by the plaintiff, and there are great numbers of smaller cities and towns through which the plaintiff's railroad runs which are important shipping, receiving, and terminal points for the large imports into, and exports from this large and highly productive State.

In addition, there are located within North Carolina at Rocky Mount among the largest terminal yards and repair shops of the plaintiff, and other large yards are located at Wilmington, N. C The defendants are informed and believe, and so allege, that as much as seventy-five per cent of the operating expenses at these points are logically applicable to interstate traffic, but that all of the said operating expenses are charged against North Carolina revenue

28. It is denied that this method of allocating earnings to the State of North Carolina is illegal or works to the disadvantage of the plaintiff for the purpose of ascertaining the net income of the plaintiff in North Carolina as alleged in article twenty-eight of the complaint.

95 (*a*) On information and belief the defendants deny that traffic which moves through North Carolina greatly exceeds the traffic originating in, or destined to, North Carolina, and that North Carolina escapes terminal expenses on any more than a proper proportion of the plaintiff's total traffic; and the defendants aver that traffic originating in North Carolina runs through many other states which receive the benefit of revenues from shipments for which North Carolina is charged the entire assembling and initial expenses, and that traffic destined to North Carolina likewise runs

through many other states which receive the benefit of their mileage proportion of the revenues from shipments, the entire final terminal expenses for which are charged in North Carolina expenses. The defendants further aver that this system of allocation of revenues and expenses which the plaintiff itself has devised and uses, and which the State Tax Commission received from plaintiff and adopted, is a method which evens itself up and gives to the respective states through which the plaintiff's system runs the most accurate possible allocation, otherwise the plaintiff itself would have abandoned this system and devised another.

(*b*) It is admitted that as to individual terminal points in North Carolina, the expenses at such points are less than those at certain larger terminal points in other states as named by the plaintiff in article twenty-eight (*b*). However, as hereinbefore alleged, this simply results from the fact that in other states through which the plaintiff's system runs terminal expenses are concentrated in larger terminal points, while throughout the portion of North Carolina served by the plaintiff terminal expenses are widely disseminated among a multitude of smaller terminal points. The defendants, therefore, aver that the allocation of operating expenses to North Carolina made by the plaintiff and filed with the Tax Commission represents in the aggregate an approximately correct charge of expenses against North Carolina revenue, and that the ratio of
96 operating expenses to operating revenues in North Carolina is truly less than that of the entire system.

(*c*) It is denied that under the scheme of taxation adopted by North Carolina, property of the plaintiff outside that State and not used in the plaintiff's business in that State, is taxed by the State. The defendants aver that if any properties of the plaintiff outside of the State of North Carolina are taken into consideration in arriving at the assessment of plaintiff's property in the State, it is only done in so far as the said properties outside of the State are a part of the values of the plaintiff's entire organic system and may be properly considered in estimating the true value of the properties of the plaintiffs in this State.

It is admitted that the operating revenue and operating expenses for the plaintiff's entire system are kept accurately, in so far as possible, and that its accounting is done under rules prescribed by the Interstate Commerce Commission and is checked by that body, and also by certified public accountants. It is denied that the capitalization of the plaintiff's net income for its entire system, the determination therefrom of the value of the plaintiff's entire property, and the apportionment of this result to North Carolina to give the value of properties in North Carolina is the proper method to be used as a consideration in arriving at the value of the plaintiff's properties in North Carolina.

29. It is denied that in arriving at the valuation of the plaintiff's property for the year 1920 the State Tax Commission did not assess and value the same according to the law of North Carolina. It is denied that either the net-earnings plan or the stock-and-bonds plan alone could have been properly used by the Commission in ar-

riving at the valuation which it placed upon the plaintiff's property without the use at the same time of the other considerations required by the statutes of North Carolina as hereinbefore alleged.

97 The defendants aver that the correctness of the said valuation cannot be checked or tested by an exclusive application of either of the plans referred to in article twenty-nine of the complaint. It is denied that the said valuation, tangible or intangible, was made upon an arbitrary basis or without justification. It is admitted that the said Commission assessed the tangible property of the plaintiff for the year 1920 at a valuation of $39,620,930, or 149.33 per cent more than the same was assessed for 1919; the defendants aver, however, that the assessment of real properties in general in North Carolina for the year 1920 was more than 200 per cent higher than that for the year 1919, a very much larger increase than that applied to the plaintiff's property. It is denied that the State Tax Commission arrived at the assessment of the plaintiff's tangible property by a sole consideration of the Investment in Road and Equipment of the entire system, and it is denied that the said assessment gave to North Carolina any property valuation to which it was not entitled, and which is not properly taxable by it. It is admitted that the intangible property was assessed at $11,246,870, but it is denied that that assessment was not made in accordance with Sections 64 and 65 of the Machinery Act of 1921. It is admitted that the aggregate valuation for 1920, tangible and intangible, was $50,867,800, and the defendants aver that the said valuation and assessment was correctly arrived at by a due consideration of all the factors, mode and methods required by the statutes of North Carolina, and that the same was legal and correct.

The defendants do not deny that the tables of figures on page 43 of the complaint are correct so far as calculations are concerned. They deny, however, that the proper figure to capitalize was the alleged average net operating revenue of the plaintiff's entire system per year for five years of $8,932,592.89, and that the figures in the second table, showing the allocation of the result of such capitalization to North Carolina at various percentages are in any way

98 the measure of the value of the total properties of the plaintiff in North Carolina, or should properly be considered in arriving at the value of the said properties. The defendants do not deny that the tables of figures on page 44 of the complaint are correct in their calculations. They deny, however, that the figures on that page, showing the capitalization at various percentages of the alleged average net operating revenue of the plaintiff for North Carolina, are, or any one of the said figures is, the measure of the value of the total properties of the plaintiff in North Carolina and subject to taxation by that State; and they deny that the assessment of plaintiff's properties for taxation can be tested or proved by a comparison with any of the said figures.

It is denied that the assessment of the plaintiff's property amounts to a tax on property beyond the jurisdiction of North Carolina, that the same is a burden upon interstate commerce, or is in violation of the commerce clause of the Constitution of the United States.

30. It is admitted that six per cent was the percentage used by the State Tax Commission in capitalizing the plaintiff's net income to the extent that that method was used at all in arriving at the said assessment. The defendants aver that that is a proper figure for such purpose. They aver that six per cent is the legal rate of interest for North Carolina. They deny that the percentage which should have been used is eight per cent or any other figure than six per cent. It is further alleged that the use of a six per cent capitalization of the plaintiff's net income for North Carolina was only one of the many factors to which the State Tax Commission gave due consideration as required by statute in arriving at the assessment for 1920, and that the consideration of this six per cent capitalization method had the effect of making the assessment less than the consideration of other factors would have made it, and resulted, therefore, in a benefit to the plaintiff. The defendants further aver that in-
99 terest rates on money show temporary fluctuations, and that the values of permanent properties of railroads do not fluctuate in any corresponding manner.

31. It is admitted that the figures quoted in article thirty-one were submitted to the Commissioner of Revenue as bearing on the question as to whether he should reduce the plaintiff's assessment for taxation. It is denied that he refused to give any consideration to the said figures, and the defendants aver that he did give them due consideration. The defendants aver, however, that the said decrease of net operating revenue from 1916 to 1920 was purely temporary, that for the year 1921 the ratio of operating expenses and taxes to operating revenue is decreasing rapidly in the plaintiff's favor, and that its net earnings are increasing and promise to continue to increase. It is denied that the temporary depression suffered by the plaintiff is in any way an index of what its net earnings will be or was reflected in any corresponding depression in the actual values of the plaintiff's railroad properties. It is denied that the plaintiff's property values fluctuated in correspondence with fluctuation in values which may have occurred with respect to other persons and corporations.

32. It is admitted that the statute of North Carolina required the Commissioner of Revenue to consider the value placed upon the property of the plaintiff by the public, as evidenced by the value of capital stock, bonds, certificates of indebtedness and other obligations, the value of which is based upon the earning capacity of the property, as alleged in article thirty-two; it is denied, however, that the said statute makes that consideration controlling or allows it to be used as the sole determining factor, in arriving at the valuation of the property of the plaintiff in North Carolina.

The defendants deny knowledge or information sufficient to form a belief as to the figures quoted by the plaintiff on pages 45 to 50, inclusive, of the complaint as to its capitalization, par value,
100 and average market value. It is denied, however, that either the alleged figure representing the par value capitalization allocated to North Carolina on mileage basis of $41,150,361.90, or

the alleged figure representing the market value capitalization allocated to North Carolina upon a mileage basis of $34,908,626 for 1920, or of $33,696,925 for 1921, is the measure of the value of plaintiff's property in North Carolina, or was or should have been a controlling factor in arriving at the valuation of the same. It is denied that the assessment of the plaintiff's property can be proved or tested by a comparison of either one of these figures.

33. The defendants deny that the so-called franchise tax is not a franchise tax measured by the value of the use of the property but is in truth and in fact an ad valorem tax as alleged in article thirty-three of the complaint. The defendants aver that the said tax is an excise, franchise, or privilege tax imposed upon the privilege of doing a strictly intrastate business within the State of North Carolina. It is denied that the said tax is not levied equally; the defendants aver that the said excise, franchise, or privilege tax, levied upon the plaintiff in addition to the ad valorem property tax, does not and cannot constitute double or unequal taxation and is violative neither of Section 3 of Article V of the Constitution of North Carolina, nor of the Fourteenth Amendment to the Constitution of the United States. It is denied that the ad valorem assessment of the plaintiff's property is excessive, iniquitous or damaging, and that the franchise or privilege tax of 1/10 of one per cent of the said assessment is in any way excessive, iniquitous, damaging, or illegal. It is denied that the said tax is levied under the guise of a franchise tax, but the defendants aver that it is a true franchise or privilege tax, not a property tax, and that it is entirely within the power of the State of North Carolina to levy the said franchise or privilege tax in addition to ad valorem property taxation, and that by
101 reason of the fact that the said franchise or privilege tax is admeasured, not by any earnings from interstate commerce nor by any properties outside of North Carolina, but only by the total properties of the plaintiff within the State of North Carolina, the said tax is in no way a burden upon interstate commerce; that it is not a tax on the privilege of engaging in interstate commerce, nor is its payment made a condition precedent thereto, and that it violates no part of the Constitution of the United Sates.

34. It is denied that the said franchise tax is not uniform and is not levied equally upon corporations, as alleged in article thirty-four of the complaint. It is alleged that the placing of railroad companies in one class and of other corporations in another class, and the imposition of a franchise or privilege tax based on total properties in the State on corporations of the first class, and the imposition of such a tax based on capital stock upon corporations of the second class is a reasonable, legitimate, and perfectly justifiable classification, and in no way violates the rule of uniformity prescribed by Section 3 of Article V of the Constitution of North Carolina, or denies to the plaintiff the equal protection of the law, or deprives it of its property without due process of law, or constitutes a burden upon interstate commerce, or in any way violates the Constitution of the United

States or the commerce clause thereof, or the Fourteenth Amendment thereto.

35. Answering allegations of article thirty-five of the complaint, the defendants admit that the plaintiff was required to pay for the year 1920, and did pay, under protest, $50,867.80, the same being the result of a calculation based upon 1/10 of one per cent of the value of the property of the plaintiff, tangible and intangible, in this State, as assessed for ad valorem taxation, used as the measure of the extent to which the plaintiff is exercising its franchise (the privilege of engaging in intrastate commerce) in this State.

102 They admit also that the plaintiff will be required to do the same for the year 1921. They deny that under the provision of Section 82 (3½) of the Revenue Act, the plaintiff should only be required to pay upon one-half of such value. They aver that Section 82 (3½) has no application to railroads or to the franchise or privilege taxes on railroads; that it is a section which was enacted in 1920 and was specifically limited in its application to taxes on corporations as levied in Section 82 of the Revenue Act of 1919; that railroads and the franchise taxes thereon were not included in any part of the said Section 82 of the Revenue Act of 1919; that when Section 82 (6½) was inserted in that section in 1920, as hereinbefore alleged, thereby shifting the provision for a franchise or privilege tax on railroads to its present position as subsection (6½) of the said Section 82, it was not intended to make the said Section 82 (3½) applicable to the tax imposed by section 82 (6½); and that the said Section 82 (3½) does not now apply, and never has applied, to railroads or taxes on railroads.

It is denied that the failure of Section 82 (3½) to apply, or to be applied, to the franchise or privilege tax levied upon the plaintiff deprived or deprives the plaintiff of the equal protection of the laws or violates the Fourteenth Amendment to the Constitution of the United States or the uniformity clause of the Constitution of North Carolina.

The defendants pray that the prayers made by the plaintiff in article thirty-five, and each of them, be denied by this Court; they aver that this Court has no power to grant such prayers, or either of them, that the franchise tax paid by the plaintiff to the State of North Carolina for 1920 was a legal tax, correctly ascertained, and lawfully due to the said State, and that the said Section 82 (3½) has no application to such tax, and has no effect to reduce the correct amount thereof to one-half of the amount so paid by the plaintiff.

36. The allegations of article thirty-six are denied.

103 37. Answering the allegations of article thirty-seven, the defendants deny that the imposition upon the plaintiff of an ad valorem property tax, of a franchise or privilege tax of 1/10 of one per cent based upon the ad valorem valuation of the plaintiff's properties within the State, and of an additional income tax of three per cent on net operating revenue, referred to by the plaintiff as a system of pyramiding taxes, amounts to or constitutes a regulation of commerce between the states, a tax upon interstate commerce, or a

burden on interstate commerce of the plaintiff, or violates Section 8 of Article I of the Constitution of the United States. The defendants allege that it is perfectly competent for the State of North Carolina, after taxing the property (tangible and intangible) of the plaintiff ad valorem as property, to levy upon the plaintiff an additional tax for the privilege of engaging in intrastate commerce (exercising its franchise in the State), and then to levy an additional tax of three per cent on its net income, which said income tax is levied equally upon all other corporations without discrimination.

38. It is admitted that the plaintiff will owe to the State, counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment for taxes upon its properties in the State of North Carolina, and the defendants aver that the said legal assessment for 1920 was that fixed for that year, and that for 1921 was that fixed for that year, excepting corrections hereinbefore referred to.

39. Answering the allegations of article thirty-nine, the defendants deny that the said assessment is illegal, and that this suit is brought to avoid a multiplicity of suits. It is denied that the said assessment is invalid; it is denied that unless the tax collecting officers of the several counties and municipalities, and the State officials, defendants herein, are restrained they will proceed to collect any illegal assessment against the plaintiff. On the contrary, the defendants aver that the said taxes which the said officers will
104 proceed to collect are valid and lawful; that they of right will become a first lien upon the real property of the plaintiff in North Carolina if not paid; it is denied that the said rightful lien will constitute a cloud upon the title to the said property against which equity should grant relief; it is denied that the plaintiff will be damaged by the remedies for the collection of the said lawful and valid taxes; and it is denied that the plaintiff has no adequate remedy at law.

Prayer.

Wherefore, the defendants, having fully answered the complaint filed in this suit, pray the Court that every and singular the prayers of the said complaint be denied and that the same be dismissed at the costs of the plaintiff.

JAMES S. MANNING,
Attorney-General of North Carolina;
FRANK NASH,
Assistant Attorney-General of North Carolina,
Solicitors for the Defendants.

WILLIAM P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

105 A. D. Watts, being duly sworn, says that he is one of the defendants in the above entitled suit; that he has read the foregoing answer to the complaint, and that it is true of his own knowledge except as to matters therein stated on information and belief, and as to them he believes it to be true.

A. D. WATTS.

Sworn to and subscribed before me, this 11th day of November, 1921.

W. P. STACY,
Associate Justice N. C. Supreme Court.

Comparative Statement of Taxable Values for the Years 1919 *and* 1920, *Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral, and Quarry Properties, Average Value per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed with County Supervisors.*

(NOTE.—This statement does not include railroad and public service corporations, banks, and corporate excess assessed by the State Tax Commission.)

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Alamance, 1919.....	257,742	$2,786,845	$10.81	$2,058,055	$6,844,638	$5,532,968	$11,377,606
Alamance, 1920.....	262,836	9,966,036	37.92	7,159,464	24,934,832	10,537,710	35,472,542
Alexander, 1919.....	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920.....	165,761	4,864,885	29.30	681,423	6,527,000	1,956,886	8,483,886
Alleghany, 1919.....	143,300	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920.....	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919.....	328,634	2,663,408	8.11	964,020	4,379,115	3,781,961	8,161,076
Anson, 1920.....	329,715	10,529,114	31.93	2,855,697	13,384,811	6,831,284	20,216,095
Ashe, 1919.....	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920.....	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919.....	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920.....	130,932	3,863,827	29.51	308,197	4,793,754	1,133,928	5,927,682
Beaufort, 1919.....	379,913	3,422,611	9.00	2,534,192	6,365,173	4,231,976	10,597,149
Beaufort, 1920.....	396,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919.....	450,883	3,040,339	6.74	862,130	4,055,859	3,467,887	7,523,746
Bertie, 1920.....	400,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919.....	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
Bladen, 1920.....	524,585	10,092,335	19.24	794,790	11,630,040	3,418,325	15,048,365
107 Brunswick, 1919....	476,230	2,406,552	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920....	502,593	5,477,845	10.90	970,035	7,953,027	2,017,305	9,970,332
Buncombe, 1919.....	312,643	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797

Buncombe, 1920.....	.....	.....	....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919.....	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920.....	316,304	7,164,477	22.65	1,932,615	11,047,772	4,793,304	15,841,076
Cabarrus, 1919.....	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920.....	222,036	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919.....	227,055	1,809,693	7.97	669,221	3,502,721	2,142,059	5,644,780
Caldwell, 1920.....	258,296	7,792,632	30.17	2,896,422	13,257,242	4,458,020	17,715,262
Camden, 1919.....	145,857	1,083,289	7.42	58,607	1,288,061	672,329	1,960,390
Camden, 1920.....	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919.....	239,554	1,703,631	7.11	1,056,084	2,993,060	1,586,379	4,579,439
Carteret, 1920.....	233,162	7,972,149	34.19	1,650,790	10,405,339	2,940,095	13,345,434
Caswell, 1919.....	262,748	1,686,517	6.42	116,680	1,803,197	2,188,466	3,991,663
Caswell, 1920.....	268,746	8,743,808	32.54	309,340	9,053,148	2,920,697	11,973,845
Catawba, 1919.....	256,932	2,460,000	9.58	1,604,830	4,092,916	5,370,515	10,063,431
Catawba, 1920.....	254,423	12,339,008	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919.....	404,913	3,063,242	7.04	504,565	4,082,437	3,551,644	7,644,081
Chatham, 1920.....	435,773	10,063,328	23.09	1,243,450	11,813,037	4,594,017	16,407,054
Cherokee, 1919.....	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920.....	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919.....	99,967	1,159,788	11.60	582,677	2,007,621	1,778,608	3,786,229
Chowan, 1920.....	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919.....	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920.....	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919.....	278,395	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920.....	277,843	16,422,057	59.11	4,554,698	28,158,726	11,168,356	39,327,082
Columbus, 1919.....	458,631	3,429,666	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920.....	.....	.....	....	.....	15,789,229	6,600,000	22,389,229
Craven, 1919.....	364,212	2,421,364	6.65	4,354,543	7,617,226	4,097,447	11,714,673
Craven, 1920.....	323,112	15,488,629	....	6,611,775	30,638,102	9,691,903	40,330,005
Cumberland, 1919.....	338,497	3,116,070	47.94	13,256,829	28,745,458	9,352,424	38,097,882
Cumberland, 1920.....	358,317	12,835,535	9.21	2,513,375	6,348,011	4,990,251	11,338,262
Currituck, 1919.....	148,426	1,513,584	35.82	7,393,804	20,522,039	7,567,734	28,089,773
Currituck, 1920.....	125,080	4,541,124	10.20	.....	1,733,291	705,677	2,438,968
Dare, 1919.....	208,400	494,859	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1920.....	.....	.....	2.37	100,929	626,963	301,642	928,605
Davidson, 1919.....	35,442	.....	....	.....	2,282,743	593,808	2,876,551
Davidson, 1920.....	355,066	15,295,793	....	.....	6,957,305	3,806,554	10,763,859

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Davie, 1919	160,640	1,529,050	9.52	358,529	2,294,469	3,043,548	5,338,017
Davie, 1920	162,798	7,224,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894
Duplin, 1920	457,279	23,071,185	50.45	1,100,364	24,211,549	7,285,518	31,497,067
Durham, 1919	178,534	3,569,232	19.99	8,021,399	14,777,121	20,808,813	35,585,934
Durham, 1920	182,608	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	303,562	4,131,420	13.60	3,036,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,680	2,871,776	12.45	9,546,925	14,234,803	22,223,137	36,457,990
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,486	9,172,680
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,700	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,506	8,192,666	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,289	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,986,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	326,225	5,631,242	1,663,562	7,294,894
Graham, 1919	177,414	984,505	5.55	28,350	2,132,988	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,869,736	1,337,240	6,206,976
Granville, 1919	319,516	2,839,542	8.88	1,267,086	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	38.20	3,463,640	16,088,145	6,775,885	22,864,030
Greene, 1919	159,369	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,466	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,587	48,173,459
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,889	5,425,881	10,168,771

Harnett, 1920	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919	321,154	3,037,607	9.45	1,779,507	6,120,975	2,762,717	8,883,692
Haywood, 1920	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,423,194
Hertford, 1919	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,869
Hertford, 1920	201,537	8,738,122	43.36	1,991,046	10,747,168	3,609,665	14,356,833
108 Hoke, 1919	224,703	2,129,767	9.48	300,364	2,653,091	2,020,935	4,674,026
Hoke, 1920	221,230	9,967,460	45.05	944,313	11,244,263	2,995,910	14,240,173
Hyde, 1919	275,961	1,540,190	5.58	40,230	1,619,250	1,071,108	2,690,358
Hyde, 1920	420,604	11,837,110	28.14	443,911	12,281,021	2,035,801	14,316,822
Iredell, 1919	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920	364,507	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919	291,748	1,555,849	5.33	188,013	2,168,624	1,993,645	4,162,269
Jackson, 1920	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919	481,735	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920	498,946	32,620,897	65.38	7,092,072	42,030,148	15,477,315	57,507,463
Jones, 1919	291,477	1,666,958	5.72	260,788	1,969,921	1,378,496	3,348,417
Jones, 1920	294,634	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919	155,733	1,467,390	9.42	926,313	2,735,378	2,144,202	4,679,580
Lee, 1920	163,139	6,712,698	41.15	1,019,819	8,706,469	3,371,944	12,078,413
Lenoir, 1919	222,375	2,205,289	9.92	2,329,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920	239,868	20,753,505	86.52	11,629,585	33,857,010	10,910,400	44,767,410
Lincoln, 1919	179,225	2,119,195	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920	193,391	7,504,532	38.80	2,009,709	12,584,088	5,417,219	18,001,307
Macon, 1919	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920	275,716	5,011,838	18.18	189,631	5,201,469	1,330,869	6,532,338
Madison, 1919	262,922	2,108,634	8.02	392,267	3,241,392	2,617,167	5,858,559
Madison, 1920	278,933	7,576,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,956,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	....	.....	2,675,983	1,042,136	3,718,119
McDowell, 1919	254,751	.....	44.72	2,699,065	15,613,311	6,799,760	22,413,071
McDowell, 1920	241,210	2,814,834	11.67	1,540,981	8,139,746	3,861,589	12,001,335
Mecklenburg, 1919	313,806	4,032,705	12.85	13,112,770	23,133,825	15,082,064	38,217,889
Mecklenburg, 1920	314,277	14,423,868	67.31	56,054,830	93,500,878	33,585,655	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,203	4,340,208	1,133,117	5,473,325

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Montgomery, 1919.....	288,986	1,706,532	6.11	629,642	2,858,839	2,478,702	5,337,541
Montgomery, 1920.....	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
Moore, 1919.....	415,165	3,178,355	7.65	1,871,452	5,434,221	3,005,237	8,439,458
Moore, 1920.....	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
Nash, 1919.....	335,415	3,878,799	11.50	3,219,117	7,865,690	8,391,768	16,257,448
Nash, 1920.....	323,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
New Hanover, 1919.....	92,962	2,100,440	22.59	10,087,280	14,941,453	5,406,709	20,348,162
New Hanover, 1920.....	114,132	3,171,311	28.05	14,309,005	37,517,377	12,528,021	50,045,398
Northampton, 1919.....	318,278	3,705,130	11.64	623,790	4,463,235	4,436,914	8,900,149
Northampton, 1920.....	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
Onslow, 1919.....	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
Onslow, 1920.....	416,808	7,308,697	20.69	992,565	10,807,997	2,756,647	13,564,644
Orange, 1919.....	241,018	1,951,875	7.78	1,051,230	3,916,209	3,078,757	6,994,966
Orange, 1920.....	244,404	7,866,281	32.19	2,219,764	10,086,045	6,222,234	16,308,279
Pamlico, 1919.....	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
Pamlico, 1920.....	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
Pasquotank, 1919.....	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
Pasquotank, 1920.....	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
Pender, 1919.....	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
Pender, 1920.....	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
Perquimans, 1919.....	151,630	1,431,991	9.44	473,929	2,009,068	1,684,783	3,693,851
Perquimans, 1920.....	135,126	4,579,632	33.89	1,035,330	5,739,609	2,359,005	8,098,714
Person, 1919.....	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
Person, 1920.....	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,076,795
Pitt, 1919.....	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
Pitt, 1920.....	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,391	61,871,989
Polk, 1919.....	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
Polk, 1920.....	130,925	3,221,221	24.61	403,878	5,043,541	3,691,363	8,734,904

Randolph, 1919	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920	489,717	13,352,406	27.27	2,842,531	18,468,305	7,049,532	25,517,837
Richmond, 1919	271,037	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,762
Richmond, 1920	298,155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919	508,290	5,661,400	11.14	2,326,580	9,063,675	8,063,294	17,126,969
Robeson, 1920	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919	345,078	3,213,287	9.08	2,215,162	8,399,673	7,917,904	16,317,477
Rockingham, 1920	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919	530,046	3,850,395	7.26	678,681	4,539,778	4,864,205	9,403,983
Sampson, 1920	578,092	16,169,478	28.00	2,181,805	22,717,990	9,305,331	32,023,240
Scotland, 1919	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471
Stanly, 1919	228,929	1,794,885	7.84	1,109,296	4,727,603	3,983,469	8,711,172
109 Stanly, 1920	245,668	10,574,057	43.04	3,745,636	21,225,000	10,608,893	31,833,893
Stokes, 1919	274,915	2,364,379	8.60	212,216	2,618,965	3,512,301	6,131,266
Stokes, 1920	286,724	10,328,827	36.02	544,334	10,873,161	4,310,595	15,183,756
Surry, 1919	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845,186	26,374,605
Swain, 1919	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919	197,595	1,518,091	7.68	382,984	2,044,250	1,308,115	3,352,365
Transylvania, 1920	198,554	4,684,341	23.59	462,625	5,304,466	2,597,049	7,901,515
Tyrrell, 1919	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830
Union, 1919	389,203	2,975,210	7.65	1,714,833	5,092,979	6,205,125	11,298,104
Union, 1920	392,429	15,605,830	39.77	4,671,356	21,444,971	10,172,675	31,617,646
Vance, 1919	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,165	10,121,596
Vance, 1920	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,735	26,519,301
Wake, 1919	531,678	5,703,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920	506,877	23,181,356	45.73	25,987,726	53,739,885	18,726,589	73,900,221
Warren, 1919	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919	200,868	1,586,739	7.90	501,569	2,180,780	1,556,516	3,737,296

Comparative Statement of Taxable Values for the Years 1919 and 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Washington, 1920.....	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919.....	207,881	1,632,998	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920.....	217,097	6,750,358	31.09	501,234	8,820,897	2,419,708	11,240,605
Wayne, 1919.....	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920.....	339,270	27,607,644	81.37	14,860,093	47,323,132	17,666,582	64,989,714
Wilkes, 1919.....	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920.....	469,130	7,999,140	17.05	880,767	12,352,003	4,357,959	16,709,962
Wilson, 1919.....	223,631	2,866,661	12.82	3,109,243	6,323,509	9,005,000	15,328,509
Wilson, 1920.....	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,562	60,470,862
Yadkin, 1919.....	211,977	1,999,500	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920.....	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919.....	174,935	1,142,880	6.53	83,079	1,335,074	1,204,819	2,539,893
Yancey, 1920.....	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

110 *Affidavit of Charles J. Joseph.*

Filed Jan. 20, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al.

Affidavit of Charles J. Joseph.

STATE OF NORTH CAROLINA,
County of New Hanover:

Charles J. Joseph, being first duly sworn, deposes and says:

That from 1900 to 1902 he was Real Estate Agent and Tax Agent of the Plant System of Railroads, in charge of the States of Georgia, Florida and Alabama; that from 1902, when the Plant System of Railroads was sold to and merged into the Atlantic Coast Line Railroad Company, a Virginia corporation, he was Tax Agent of the Second and Third Divisions of the Atlantic Coast Line Railroad Company, in charge of the States of Georgia, Florida, Alabama and a part of South Carolina; that from 1907 to date, he has been Tax Agent of the entire system of the Atlantic Coast Line Railroad Company, in charge of the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama; that from 1883 to 1900,
111 he was civil engineer and Chief Clerk to Superintendent of the Florida Southern Railroad Company, Savannah, Florida & Western Railroad Company and the Plant System of Railroads, at various periods of time; that his duties as such Real Estate Agent and Tax Agent were to return for taxation the properties of such railroads, in the several states traversed by them, and to appear before the tax boards of the said states in the matter of the assessment of properties of said railroads.

That under an Act of the General Assembly of North Carolina of 1919 entitled, "An Act to Provide for the Listing and Valuing of all Property, Real, Personal and Mixed, at its Real Value in Money," the property, real, personal and mixed, of every citizen of the State of North Carolina, was ordered to be revalued at its true value in money, and in accordance with Section 31 of said Act, the State Tax Commission of North Carolina was ordered to make a complete revaluation of the properties of all railroad, telegraph, telephone and street railway companies, to be used as a basis for computing taxes for the years 1920, 1921, 1922 and 1923, such revaluation to be made

in accordance with the general rule and intent and purposes of the Act as to all other property.

The said State Tax Commission was given the right to require all information required by Chapter 234 of North Carolina of 1917, together with a sworn estimate by an officer of the company of the cost of reproduction of their property new, including side tracks, etc., less depreciation and other information as set forth in said Section 31 of said Revaluation Act.

In accordance with the authority given to the said Commission it prepared and furnished to said railroad corporations a form for listing railroad properties requiring said railroad companies to fill it up and complete in detail the various items set forth in said form, which included the engineering and overhead accounts, lands used for carrier and non-carrier purposes, roadbed, crossings and signs, telegraph and telephone lines, signals, stations and interlocking plants, station and office buildings, roadway buildings, water
112 and fuel stations, shops and equipment, roadway machines, locomotives and passenger and freight train cars, working equipment and miscellaneous. This form for listing or questionnaire sent to the railroad companies also included the amount of capital stock and the number of shares, the market and par value of same, the amount of bonds and funded debt, certificates of indebtedness, and the market value thereof, and the rate of dividends on such stocks.

The affiant on April 7, 1920, on behalf of the Atlantic Coast Line Railroad Company returned said form completely filled out as requested by the said Commission and enclosed same with a letter to J. S. Griffin, Clerk in Charge of Revaluation and Assessments at Raleigh, together with a schedule of the value of the stocks and bonds, a copy of which letter and schedule are hereto attached to this affidavit and prayed to be made a part hereof and marked Exhibit A. Reference is also hereby made to the said report made to the said State Tax Commission which is prayed to be taken as a part of this affidavit as fully as if the same were herein incorporated. Thereafter, and on May 7, 1920, the said State Tax Commission called on this affiant as Tax Agent of the Atlantic Coast Line Railroad Company for a statement of the value of its property investment filed with the Interstate Commerce Commission for the purpose of aiding the Interstate Commerce Commission in fixing its rate basis so as to arrive at a 6% return under the Transportation Act, 1920, a copy of which said request from the State Tax Commission is hereto attached and marked Exhibit B and prayed to be made a part of this affidavit.

That in accordance with said request and on May 31, 1920, the said Atlantic Coast Line Railroad Company filed with the State Tax Commission of North Carolina a statement of its investment account as requested. A copy of the letter from this affiant as Tax Agent to the State Tax Commission of May 31, 1920, together with
113 a copy of the said property and investment account attached is hereto appended to this affidavit and marked Exhibit C, and prayed to be taken as a part hereof.

That thereafter, and on June 10, 1920, the said Tax Commission notified this affiant as Tax Agent of the Atlantic Coast Line Railroad Company, that the said Commission had valued and assessed the property, tangible and intangible, of the Atlantic Coast Line Railroad Company in North Carolina, at $55,929,629.00 that said notice, a copy of which is attached hereto and marked Exhibit D, simply gives the aggregate amount of the assessments against this company's properties in North Carolina and gives no information as to the basis of said assessment nor subdivisions thereof, as between tangible and intangible and as between the real and personal property.

The Atlantic Coast Line Railroad Company being dissatisfied with said assessment requested a hearing upon the same, which hearing was granted and the matter heard on June 23, 1920, before the said Commission at Raleigh, at which hearing the Atlantic Coast Line Railroad Company produced evidence to show that the said assessment was excessive. This affiant proved at said hearing that under the statute of North Carolina the said assessment could not be arrived at by any of the methods fixed by law; that if the said assessment was made upon the par or market value of the capitalization of said railroad and allocated to North Carolina on a mileage owned basis, that the value in North Carolina on May 1, 1919, on par value of stocks and bonds, was $38,628,301, and the market value as of May 1st, 1919, was $34,551,233; that if the assessment was made upon the net operating revenues less taxes, and capitalized at 6% for the year 1919, it would amount to $34,799,584; that if it was made upon the earning capacity as fixed by the actual compensation allowed under the Federal Control Act, it would amount to $34,-
106,346; that if it was based on investment and road equip-
114 ment and materials and supplies, and allocated to North Carolina, it would amount to $40,330,357. Affiant further brought to the attention of the Commission and proved at said hearing that if in calculating the investment in road and equipment no deductions have been made on account of the large and costly terminals outside of the State of North Carolina, which give a greater value per mile of line outside of North Carolina as compared with the lines inside. At said hearing the Chairman of the said State Tax Commission stated that the Atlantic Coast Line Railroad Company prior to the revaluation was already assessed at 85% of its actual value.

At this hearing this affiant and counsel, who attended said hearing, requested said State Tax Commission to advise the Atlantic Coast Line Railroad Company the basis or method upon which it reached such valuation but the State Tax Commission refused to do so, stating that the amount found was an arbitrary amount. The said Atlantic Coast Line Railroad Company protested against said assessment and as the result and hearing the same was reduced and fixed at the sum of $50,867,800. The Atlantic Coast Line Railroad Company, through its representatives, had a conference with the State Tax Commission on the 16th day of July, 1920, when it again protested against said assessment, but without avail. It later, on July

19, 1920, filed a formal protest to said assessment, a copy of which is attached hereto and marked Exhibit E, and prayed to be taken as a part hereof. In this connection this affiant says that at said hearing before the said State Tax Commission on July 16, 1920, the Commission stated that it took the four years of 1915, 1916, 1917 and 1918, and used them in arriving at the earning basis for the Atlantic Coast Line Railroad Company and refused to take the year 1919, or any portion thereof, although the date fixed for the valuation was May 1, 1919, and although such figures were furnished them and proof was made to the said Commission that the United States Gov-
115 ernment had increased as of January 1, 1919, wages of all kinds, and that materials and supplies of all grades were increased during the year 1919, which increase was so heavy that it was materially reflected in the revenues of the said Atlantic Coast Line Railroad Company and that the operating ratio for 1919 up to that time was 84.18% as against 1918 of 74.86%, and 1917 of 67.57%, and although proof was made to the said Commission that the difference between the operating revenue for 1918 and 1919 in North Carolina was $1,116,865.18. At said hearing on July 16th, the Commission stated that the assessment of the Atlantic Coast Line Railroad Company was an arbitrary assessment based upon the earning capacity plus an arbitrary amount added.

Affiant attaches hereto a statement marked Exhibit F, showing the average operated miles for the entire system and in the State of North Carolina, for the years 1915, 1916, 1917 and 1918, and the gross operating revenue and operating expenses, and taxes and net operating revenue, for the same years, which statement shows the average net operating revenues, less taxes for the entire system, was $10,870,765.29, which capitalized at 6% shows, a valuation for the entire system of $181,179,422.00. The average operated mileage of the Atlantic Coast Line Railroad Company in North Carolina for the said four years was 1,043.17, or 21.928% of the entire system which would make the value allocated to North Carolina upon an average operating mileage basis, $39,729,023.66, all of which infoaormation was in poe-ession of the said State Tax Commission of North Carolina at said hearing.

Affiant further says that the said State Tax Commission refused to take any further action in regard to the reduction of this property and the taxes for the year 1920 and since that time the Atlantic Coast Line Railroad Company has paid the 1920 taxes under protest.

Affiant further says that under none of the bases generally
116 used for valuation can the figure $50,867,800, be arrived at as the valuation of the Atlantic Coast Line Railroad Company. Affiant further shows that notwithstanding the statement made by the Commission to fix the valuation of the Atlantic Coast Line Railroad Company, first, that they used the earning basis, and, second, that they made an arbitrary assessment, affiant begs leave to quote from the report of the said State Tax Commission to Governor of North Carolina, dated August 10, 1920, in which the said State Tax Commission informed the Governor that in valuing the property of

the railroad companies it used the investment account to find its physical value. On page 5 of the said report the Commission says:

"Valuation of Railroads.—One frequent criticism has been that the valuation of railroad property could not be increased it being understood that they were assessed at full value before. Our report shows that railroad properties had been increased from $125,417,618.00 to $259,587,158.00, or more than double. Under the new Interstate Commerce Act the Interstate Commerce Commission is required to make rates that will yield an average return of not less than five and one-half per cent upon the railroad lines as a whole and to find a fair value of these properties as a ba-is for making the new rates. That Commission has not yet determined the basis upon which the value of the railroad lines will be finally fixed. It will take several years to complete the physical valuation of all these properties. Pending this final valuation the railroad lines have submitted to the Interstate Commerce Commission what is known as their investment accounts and have asked that this basis of value be used for determining the scale of rates and amounts of return they are en-
117 titled to earn their properties. It seems clear to us that the time has come when the value upon which railroad or public utility is permitted to earn a return in the value upon which it should pay taxes in this state. In either case the purpose is to find the fair value of the property. So that generally our valuation of railroad lines in this state is based upon a mileage proportion of their investment account which they have asked the Interstate Commerce Commoission to adopt for making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines based upon the volume of business in this state greater than the average volume of traffic on their lines as a whole.

"The experiences of recent years have been conclusive that any amount of tax levied against railroad companies is a tax upon the *the* whole public served by them. If it were legal to do so and we were to collect all public revenue from railroad companies it would simply mean that we would pay our taxes through railroad depots and ticket offices instead of the public officers who now collect them. The new assessment of railroads does not represent as great an increase as the average increase of other property for the reason that they were assessed relatively higher than other property before, but we anticipate that it will meet the fair demand of public opinion when it is known that they are assessed like other property at their full value, and upon a valuation quite as high as that upon which they are asking to be permitted to earn a return."

Affiant begs leave to refer to said report, an entire copy of which will be exhibited upon this hearing. Of the above valuation
118 of the property of this company of $50,867,800, the Commission has informed this affiant by letter dated September 27, 1920, that the sum of $39,620,930 is tangible property and the sum of $11,246,870 is intangible property.

That the legislature of 1921 as set forth in the bill of complaint herein authorized a horizontal reduction in real property to be effective in the year of 1921, and the said Atlantic Coast Line Railroad Company made application for a reduction in its assessment and an informal hearing was granted by the Commissioner of Revenue on June 1, 1921, at which time proof was made to the said Commissioner of Revenue of the decrease in the market values of the securities of this affiant since 1919, and of the decrease in its earning power and as to the errors in the report fixed by the State Tax Commission; that the cost of materials and supplies in 1921 was less than in 1919, which necessarily affected the value of the physical property; that the net income of the said Atlantic Coast Line Railroad Company for North Carolina had decreased from $3,161,042 in 1916 to $795,493, while the operating expenses and taxes had increased from $7,056,605.49 in 1916 to $17,827,740.50 in 1920; that the various counties throughout which this railroad company's property had made horizontal reductions in the real estate in these counties and request was made for similar horizontal reductions of this railroad company's property; that the railroads enjoying the highest rate of credit were having to pay from 7½ to 8 and 8½% for money, and in some cases higher; and that in addition to said reduction in real estate to which the railroad was entitled under the law it was entitled to a further reduction on account of the overassessment of its property and the facts and figures as set forth in the bill of complaint were exhibited to the Commissioner of Revenue notwithstanding which the said Commossioner of Revenue advised this affiant that the assessment of the said Atlantic Coast Line Railroad Company's
119 property for the year 1921, was $51,163,717.00, or an increase of $295,917.00 over the assessment of 1920. The Atlantic Coast Line Railroad Company protested this assessment and asked for a hearing which was granted by the said Commissioner of Revenue on July 21, 1921, who invited the Chairman of the North Carolina Corporation Commission and the Attorney General to sit with him as advisors. At said hearing the Commissioner of Revenue advised that the law did not permit a hearing by the State Board of Equalization or an appeal to that body, and the Attorney General, who was present so ruled. At this hearing proofs were again offered of all of the foregoing facts and that the capitalization should be increased from 6% to 7% or 8%. The Atlantic Coast Line Railroad Company produced facts and figures at this hearing to show that the value of all real estate in North Carolina had decreased, and that the earnings of this company had fallen and that the operating expenses had risen. Notwithstanding all the evidence presented to the said Commissioner, the substance of which is set forth in bill of complaint in this case the said Commissioner of Revenue certified down said assessment of $51,163,717.00 to the State Auditor, who certified the same to this company.

That on August 13th, and August 15th, 1921, the Atlantic Coast Line Railroad Company protested against the assessment made for 1921, and further protested the refusal of the Commissioner of Revenue to allow a reduction in this assessment, copies of which protests

are hereto attached and marked Exhibits G and H, from which it will be shown that the Atlantic Coast Line Railroad Company did both at said hearing and in said protests submit to the Commissioner of Revenue evidence showing that the said assessment was illegal and that it was entitled to a reduction.

Affiant says that the decrease in value of farm products and decrease in acreage planted in North Carolina was reflected in the returns of the Atlantic Coast Line Railroad Company,

120 Affiant further shows that the increase in percentage of complainant's operating revenues for the year 1920 over 1919 was 16.62 while its operating expenses increased for the same period of time 28.87.

This affiant further says that the only known method of ascertaining the intangible value of the property of a corporation is to take the difference between the tangible value of the property and the entire value of the property; that Section 64 of the said Machinery Act of North Carolina provides that the intangible property must be assessed separately and the said Machinery Act provides that the value of the franchise shall be determined by consideration of the gross earnings as compared with the operating expenses, and particularly, by consideration of the value placed upon the whole property by the public, (the value of the physical property being deducted), as evidenced by the market value of the capital stock, certificates of indebtedness, bonds or other securities the value of which is based upon the earning capacity of the property.

Affiant shows that the tangible value of this company's property was fixed by the State Tax Commission in 1920 as $39,620,930.00, and the intangible value at $11,246,870.00, and if the aggregate value of the tangible and intangible property of this company was attempted to be fixed on earning basis, for the four years from 1915 to 1918, inclusive, and North Carolina's proportion allocated to it on operating mileage basis the total value would amount to only $39,729,023.66, which would leave an intangible value of $129,-023.66. If the said value is to be fixed on the stock and bond plan and allocated to North Carolina on basis of the market value of the stocks and bonds as of May 1, 1919, the value of the same would be $38,628,301, which would leave no intangible value, but affiant further says that even if the stock or bond plan or any other plan were used, then that portion of the complainant's property outside of North Carolina which is not used in its business as a carrier in operating its property in North Carolina should be first de-

121 ducted which would leave an intangible value much smaller than either of the figures herein shown. If the value of the said property is to be based upon the amount of Federal compensation paid to complainant during Federal control then the value of said property would be $36,227,090, or $3,393,840, less than the assessed value of the tangible value of the property for the year 1920 in the State of North Carolina. Affiant furnishes these figures because of the fact that in the assessment of the said property for 1920 the said State Tax Commission of the State of North Carolina

called for said figures in considering the assessment of this company's property. Affiant further asserts, however, that the net operating revenues of this company have materially decreased in the year 1920 and 1921 from what they were for the years prior to the year 1919, and that, therefore, the revenue for the years 1919, and 1920, should be considered in the valuation of this company's property, and that if the value of said company's property is based upon the five years from 1916 to 1920, inclusive, and capitalized upon earning basis at 6% and allocated on operating mileage basis to North Carolina the value would be $32,279,413.17, or leaving no intangible value.

In reference to the answer to the first allegation of the bill of complaint affiant further says that the second track and side track mileage should not be used in figuring the mileage under the law of North Carolina for that under Section 65 of the Machinery Act it is provided that when any railroad has a part of its road in North Carolina and a part in another state the Commission shall ascertain the value of its property as a whole, and divide it in proportion to the length of such main line of railroad in North Carolina bears to the whole length of said main line of road and determine the value in North Carolina accordingly.

Affiant further says that the operating expenses and revenues of large steam railroads are computed on basis of main line, single track mileage, and in figuring the earnings and value on
122 earning basis the same is calculated on basis of single track main line mileage. Affiant further says that under the Rules Pertaining to Operating Statistics of Large Steam Railways, promulgated by the Interstate Commerce Commission, the Interstate Commerce Commission provides that the average number of miles of road of the first running track and of other main line tracks not including yard tracks and sidings shall be shown for freight service and mixed service combined, and also for passenger service and mixed service combined, and that class 1 roads, of which complainant is one, must report all of their earnings upon this basis in ascertaining the operating earnings per mile of road.

Affiant further says that the figures shown in allegation 32 on pages 45, 46 and 50, of the bill of complaint herein, showing the stocks and bonds and other obligations of this company, and miles of road and values on mileage basis, and the values upon the stock and bond basis as outlined herein, are true and correct.

Affiant further says that the confusion and misunderstanding referred to in answer to the sixteenth allegation of complainant was made by the Commission itself and not by the complainant; that the Commission was informed of the discrepancies and agreed to correct the discrepancies in the year 1921, which they failed to do.

C. J. JOSEPH.

Sworn and subscribed to before me, this 21st day of December, 1921.

[SEAL.] C. S. MORSE,
Notary Public.

My commission expires February 19, 1922.

123 EXHIBIT "A."

Wilmington, N. C., April 7, 1920.

Mr. J. S. Griffin,
Clerk in Charge of Revaluation Assessment,
Raleigh, N. C.

DEAR SIR:

Taxes—Tax Returns—State of North Carolina—Year 1920.

The Atlantic Coast Line Railroad Company herewith submits the Returns of its property in this State for taxation, following the form for listing railroad properties as furnished by the Commission from the best information obtainable, not upon the cost of reproduction less depreciation which is impossible to furnish in the period allotted by the Commission, but upon the inventory value. The rolling stock is returned as follows:—Locomotives and passenger equipment that are located in the State in intra-state business and a mileage basis of those used in inter-state business; the freight and work equipment of the entire system distributed to North Carolina on the percentage of road mileage basis.

If the railroads are to be taxed as an indivisible unit, they must be valued as an indivisible unit. In such cases there are (at least) two recognized methods known as the Stock and Bond plan and the Capitalization of Income plan.

Stock and Bond Plan.—Statement herewith attached shows this Company's stock and bonds actually outstanding at par and market values, showing the value per mile owned and amount distributed to the State of North Carolina on a mileage basis. The stock and bonds of a railway company represent the value of all property of the company, whether devoted to operation or not, lands, real estate, manufacturing plants, compress warehouses, stock and bonds of other companies, etc. To untangle all these items and make the proper deductions from the total value represented by the stock and bonds is a task too large in the period allotted to make the Returns. The corporate money value of a railway company and the money values incorporated in the property devoted to operation are two different magnitudes, sometimes differing quantitatively by millions of dollars. No deductions are made on account of large and costly terminals at Pinners Point, Va., Charleston, S. C., Savannah and Brunswick, Ga. and Jacksonville and Tampa, Fla., causing a great excess value per mile of lines outside this State as compared with those inside.

124 The annual compensation guaranteed under Section 1 of the Federal Control Act is herewith shown. This compensation, (based upon the earnings for three years,) less corporate expenses and taxes, capitalized at 6% and distributed to North Carolina on an operation mileage basis would give the State the real value of the operative property based upon earnings.

Valuation for tax purposes seeks to determine value, not cost. It is concerned only indirectly with actual investments and not at all with the reasonableness of capital expenditures or the usefulness of the property in rendering the particular public service. It is vitally interested in earning power, therefore, it should not be based upon cost of reproduction but upon nominal market value. The physical property of a railroad is highly specialized; the track or distribution system has no use other than in public service, except in connection with a going concern the greater part of the property has only salvage or junk value. The earning power sought for tax purposes is that fixed by rates, and until the rates are based upon the cost of reproduction and the earnings are ascertained from those rates, the value of railroads should be assessed upon their present earnings, which is the compensation paid them by the Government, their lessees.

The investment in the Road and Equipment of the entire system owned December 31, 1918, as shown on the books of this Company, is $189,127,244.60 or $39,849.23 per mile owned December 31, 1918, distributed to North Carolina, 950.15 miles, would be $37,862,746. The excess of this amount over that shown in the returns is accounted for by the costly terminals, etc. outside of the State of North Carolina.

Valuation in North Carolina.

Aggregate valuation of tangible property, shown in Returns	$32,188,328
Aggregate valuation of stock and bonds plan, par value	$35,276,115
Aggregate valuation of stock and bonds plan, market value	41,552,857
Aggregate valuation of Capitalization Federal Compensation	$34,957,106
Aggregate valuation of investment	$37,862,746

Yours very truly,

C. J. JOSEPH,
Tax Agent.

(Here follows table marked page 125.)

ATLANTIC COAST LINE RAILROAD COMPANY
STOCKS AND BONDS

EXHIBIT "A"

	Total Par Value May 1, 1919	Market Value	Total Market Value May 1, 1919
CAPITAL STOCK:			
Common	$ 68,559,400	97	$ 66,502,618
Preferred	196,700	100	196,700
	$ 68,756,100		$ 66,699,318

	Principal	Total Par Value Actually Outstanding	Market Value	Total Market Value May 1, 1919
MORTGAGE BONDS:				
Sandford & St. Petersburg R. R. Co.....1st 4%.....	$ 275,000	$ 275,000	80	$ 220,000
Petersburg R. R. Co., Class "A".....1st 5%.....	868,000	868,000	97	841,960
Petersburg R. R. Co., Class "B".....2nd 6%.....	800,000	800,000	103	824,000
Alabama Midland Ry. Co.....1st 5%.....	2,800,000	2,800,000	97½	2,730,000
Northeastern R. R. Co.....Con 6%.....	657,000	657,000	104	683,280
Savannah, Florida & Western Ry. Co.....1st 6%.....	4,056,000	4,056,000	107¾	4,355,130
Savannah, Florida & Western Ry. Co.....1st 5%.....	2,444,000	2,444,000	96½	2,358,460
Wilmington & Weldon R. R. Co.....Gen 1st 5%.....	3,062,000	3,062,000	100	3,062,000
Wilmington & Weldon R. R. Co.....Gen 1st 4%.....	938,000	938,000	80	750,400
Charleston & Savannah Ry. Co.....1st 7%.....	1,500,000	1,500,000	112½	1,687,500
Brunswick & Western R. R. Co.....1st 4%.....	1,407,000	1,407,000	82¾	1,162,534
Norfolk & Carolina R. R. Co.....1st 5%.....	1,314,000	1,314,000	99	1,300,860
Richmond & Petersburg R. R. Co.....Con 4½%.....	300,000	300,000	87½	262,500
The Florida Southern R. R. Co.....1st 4%.....	2,418,000	2,418,000	80	1,934,400
Norfolk & Carolina R. R. Co.....2nd 5%.....	400,000	400,000	99	396,000
Wilmington & Newbern R. R. Co.....1st 4%.....	106,000	106,000	80	84,800
Atlantic Coast Line R. R. Co. of S. C.....Gen 1st 4%.....	5,547,000	5,047,000	82	4,138,540
Atlantic Coast Line R. R. Co.....1st Con Mtg 4%.....	51,326,750	50,863,000	81¾	41,391,505
Atlantic Coast Line R. R. Co.....Uni Mtg 4%.....	15,000	15,000	80	12,000
Atlantic Coast Line R. R. Co.....Gen Uni Mtg 4½%...	46,631,674	22,699,000	80½	18,272,695
Atlantic Coast Line R. R. Co.....Gen Uni Mtg 4%.....	100,000	100,000	80	80,000

Brunswick & Western R. R. Co.

MISCELLANEOUS OBLIGATIONS:					
A. C. L. R. R. Co.—Convertible Debentures	4%	$ 4,481,045	$ 4,481,045	80	$ 3,584,836
A. C. L. R. R. Co.—Certificates of Indebtedness	4%	135,100	135,100	80	108,080
W. & W. R. R. Co.—Certificates of Indebtedness	7%	600	600		600
		$ 4,616,745	$ 4,616,745		$ 3,693,516
EQUIPMENT TRUST BONDS:					
A. C. L. R. R. Co.—Series "B"	4½%		$ 750,000	87	$ 652,500

RECAPITULATION

	Par Value May 1, 1919	Market Value May 1, 1919
Capital Stock	$ 68,756,100	$ 66,699,318
Mortgage Bonds	102,069,000	86,548,564
Income Bonds	15,000	15,000
Miscellaneous Obligations	4,616,745	3,693,516
Trust Bonds	750,000	652,500
	$ 176,206,845	$ 157,608,898
Miles Owned May 1, 1919	4,746.07	
Average Value per mile	$37,126.89	$33,208.29
Miles in North Carolina	950.15	
Value in North Carolina	$ 35,276,115	$ 31,552,857

NOTE: The Atlantic Coast Line Railroad Company has outstanding $35,000,000 par value of 50 years 4% *Collateral Trust* Gold Bonds, which are not secured by mortgage upon the property of the Atlantic Coast Line Railroad Company and are not a part of its funded debt, but are secured by the pledge of 367,200 shares of the capital stock of the Louisville & Nashville Railroad Company owned by the Atlantic Coast Line Railroad Company, which is not included in above.

FEDERAL COMPENSATION

Annual Compensation under Federal Control Act	$ 10,180,915.15
Corporate Expenses and Taxes, Year ended December 31, 1918	470,607.80
	$ 9,710,307.26
Capitalized at 6%	$161,838,454.
Miles Operated Entire System, December 31, 1918	4,839.76
Miles Operated North Carolina, December 31, 1918	1,045.72
North Carolina's proportion Miles Operated, December 31, 1918	21.60%
21.60% of $161,838,454	$34,957,106

COST OF ROAD AND EQUIPMENTS

Cost of Road and Equipment to December 31, 1918		$189,127,244
Miles owned May 1, 1919	4,746.07	
Cost of Road and Equipment, per mile owned		$39,849.23
Miles in North Carolina	950.15	$37,862,748

126 EXHIBIT "B."

Raleigh, N. C., May 17, 1920.

Mr. C. J. Joseph, Tax Agent,
Atlantic Coast Line Railway,
Wilmington, N. C.

DEAR SIR:

The commission would like to have from your company a statement of the value of your property investment filed with the Interstate Commerce Commission for the purpose of aiding the Interstate Commerce Commission in fixing its rate basis so as to arrive at a six per cent return under the Transportation Act, 1920.

The commission would like to have this information as early as possible.

Yours very truly,

J. S. GRIFFIN,
Clerk in Charge Revaluation Assessment.

G.-E.

Mr. W. L. Stanley, Ass't to Pres., S. A. L. R. R., Atlanta, Ga.
Mr. Murray R. Hubbard, Tax Commissioner, Southern Railway, Atlanta, Ga.
Mr. M. S. Hawkins, Asst. to Pres., N. & S. R. R., Norfolk, Va.
Mr. H. G. Morrison, Gen. Counsel, C. C. & O. R. R., Johnson City, Tenn.

"EXHIBIT "C."

Wilmington, N. C., May 31, 1920. jt.

Mr. J. S. Griffin,
Clerk in Charge of Revaluation Assessment,
Raleigh, North Carolina.

DEAR SIR:

Taxes—Tax Returns—State of North Carolina—Year 1920.

In reply to your letter of the 17th instant, requesting a statement of the value of the Atlantic Coast Line Railroad Co. filed with the Interstate Commerce Commission for the purpose of aiding them in fixing its rate basis so as to arrive at a six per cent return under the Transportation Act of 1920.

Hereto attached please find statement of property investment of
127 the Atlantic Coast Line Railroad Co. and its subsidiaries as filed with the Commission as of Dec. 31, 1919. Also a recapitulation separating the Tampa Southern Railroad, leased property and investment in terminal property used exclusively in producing income for this Company, showing the property investment of the A. C. L. R. R. Co. exclusive of leased lines, etc., on Dec. 31, 1919 to be $184,789,261 or $38,835.47 per mile owned; and May 1, 1919, $183,970,932, or $38,663.49 per mile owned.

Yours truly,

C. J. JOSEPH,
Tax Agent.

Road or System.—Atlantic Coast Line Railroad Company, and subsidiaries, the income of which is included in the Operating Income of the reporting carrier, Form 100.

	A. C. L. R. R. leased lines & interests in terminals, etc.	Leased lines, interests in terminals, etc.	A. C. L. R. R.
Total Property Investment Dec. 31, 1917	$184,944,622		
Improvements on Leased Property	.....	$54,191	
Total Property Investment Dec. 31, 1917 less leased property	.....	.....	$184,890,431
Additions & Betterments, Jan. 1, 1918 to Dec. 31, 1919	5,957,929		
Additions & Betterments on leased property to Dec. 31, 1919	.....	9,160	
Tampa Southern Railroad Co	.....	1,474,302	
Additions & Betterments, Jan. 1, 1918 to Dec. 31, 1919	.....	.....	4,474,467
Estimated Cost of Government Allocated Equipment to date	5,929,875	.....	5,929,875
Leased Property used exclusive of producing income	2,358,027	2,358,027	
Interest in Terminal Property, etc., used in producing income	4,700,081	4,700,081	
	$203,890,534	$8,595,761	$195,294,773
Book Value Material & Supplies, Dec. 31, 1919	5,282,118	.....	5,282,118
	$209,172,652	$8,595,761	$200,576,891
Accrued Depreciation, Dec. 31, 1919	15,787,630	.....	15,787,630
	$193,385,022		$184,789,261
Miles of Road Owned Dec. 31, 1919	4,794.10		4,758.26
Property Investment Per Mile Owned	$40,338.12		$38,835.47

EXHIBIT "C".

Form 102.

PROPERTY INVESTMENT

ROAD OR SYSTEM:—Atlantic Coast Line Railroad Company and subsidiaries, the income of which is included in the Operating Income of the reporting carrier, Form 100.

OWNER CORPORATION (See Note 1.)	PROPERTY INVESTMENT ACCOUNTS DEC. 31, 1917				ADDITIONS AND BETTERMENTS TO PROPERTY JAN. 1, 1918 TO DEC. 31, 1919 (Excluding Allocated Equipment)				
	Miles of Road Owned Dec. 31, 1917	Account 701 Investment in Road and Equipment (See Note 3)	Account 702 Improvements on Leased Railway Property	Total	Miles of Road Owned Dec. 31, 1919	Expenditures By Director General (See Note 2)	Expenditures By Corporation	Total	Grand Total (Col. e plus Col. i.)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
ATLANTIC COAST LINE R. R. CO.	4,704.56	$184,890,431	$ 54,191	$184,944,622	4,758.26	$3,911,270	$ 572,357	$4,483,627	$189,428,249
TAMPA SOUTHERN R. R. CO. (That part of road between Uteca and Palmetto, Fla., not completed, but in operation.)					35.84	----------	1,474,302	1,474,302	1,474,302
TOTAL	4,704.56	$184,890,431	$ 54,191	$184,944,622	4,794.10	$3,911,270	$2,046,659	$5,957,929	$190,902,551
Property used by A. C. L. R. R. Co. exclusively in production of its income, the property investment not being reported by owner:									
Central R. R. of S. C.	40.20	$ 470,000	$----------	$ 470,000					
South Carolina Pacific Ry. Co.	10.56	204,600	----------	204,600					
Tidewater Power Co., Wilmington Dummy Line	1.42	50,000	----------	50,000					
Various owners right of way, Wilmington Dummy Line		33,310	----------	33,310					
Thirteen "Russian" decapod locomotives		650,000	----------	650,000					
Gordan Wharf, Savannah, Ga.		200,000	----------	200,000					
Portion of Savannah, Ga., property United Hydraulic Cotton Press Co.		150,117	----------	150,117					

NOTES AND INSTRUCTION:

(1) The purpose of this form is to obtain information upon the total investment in railway property necessary to produce the operating revenues of the reporting carrier, as shown on Form 100. The respondent should include not only the book value of such property owned by the operating company but also the book value of the property investment of lessor companies, except property investments the rental of which is included in Form 100, and the investment of the operating company in improvements are not reported by the lessor company.

The names of lessor companies should be shown with their mileage and the book value of the

Road or System.—Atlantic Coast Line Railroad Company, and subsidiaries, the income of which is included in the Operating Income of the reporting carrier, Form 100.

Dummy Line	1.42	50,000	.....	50,000
Various owners right of way, Wilmington Dummy Line		33,310	.....	33,310
Thirteen "Russian" decapod locomotives		650,000	.....	650,000
Gordan Wharf, Savannah, Ga.		200,000	.....	200,000
Portion of Savannah, Ga., property United Hydraulic Cotton Press Co.		150,117	.....	150,117
Portion of property of The A. L. & I. Co., at Tampa, Fla.		500,000	.....	500,000
At Brunswick, Ga.		100,000	.....	100,000
TOTAL	52.30	$ 2,358,027	$.....	$ 2,358,027
Proportion of property, investment, based on stock ownership by A. C. L. R. R. Co. of properties used by A. C. L. R. R. Co., in production of its Income, Property Investment not being reported by owner:				
Alabany Passenger Terminal Co.	.17	$ 20,847	$.....	$ 20,847
Atlantic & East Coast Terminal Co.	.....	296,152	.....	296,152
Augusta & Summerville R. R. Co.	.56	32,722	.....	32,722
Augusta Union Station Co.	.26	118,875	.....	118,875
Belt Line Ry. Co.	1.82	416,080	.....	416,080
Charleston Terminal Co.	.....	500,179	.....	500,179
Charleston Union Station Co.	.30	152,150	.....	152,150
Columbia Union Station Co.	.30	75,235	.....	75,235
Goldsboro Union Station Co.	.28	33,810	.....	33,810
Jacksonville Terminal Co.	2.59	750,000	.....	750,000
Norfolk & Portsmouth Belt Line R. R. Co.	.....	162,360	.....	162,360
North Charleston Terminal Co.	.....	35,000	.....	35,000
Richmond Terminal Ry. Co.	1.46	1,499,712	.....	1,499,712
Savannah River Terminal Co.	.....	49,413	.....	49,413
Savannah Union Station Co.	3.71	805,175	.....	805,175
Tampa Union Station Co.	.31	85,650	.....	85,650
Wilmington Ry. Bridge Co.	2.52	166,771	.....	166,771
TOTAL	14.40	$ 4,700,081	$.....	$ 4,700,081
GRAND TOTAL	4,771.16	$191,948,539	$ 54,191	$192,002,730

RECAPITULATION

Total Property Investment Column (e), Dec. 31, 1917	$192,002,730
Additions and Betterments Column (i), Jan. 1, 1918 to Dec. 31, 1919	5,967,929
Estimated Cost of Government Allocated Equipment, Jan. 1, 1918 to date	5,929,875
TOTAL	$203,890,534
Book Value of Material and Supplies at Dec. 31, 1919	$ 5,282,118
TOTAL PROPERTY INVESTMENT, Dec. 31, 1919	$209,172,652
Book Value of Materials and Supplies at Dec. 31, 1917	$ 5,532,629
Book Value of Materials and Supplies at Dec. 31, 1918	$ 5,366,546

ACCURED EPRECIATION, DECEMBER 31, 1919

	Account 775 Road	Account 776 Equipment	Total
On Federal Books	$ 249,215	$ 2,718,564	$ 2,967,779
On Corporate Books not including above	1,665,670	11,154,181	12,819,851
TOTAL	$ 1,914,885	$ 13,872,745	$ 15,787,630

Property retire and not replaced, not credited to investment accounts.....$ None.

h t 12-30-21

page 129

respondent should include not only the book valu of such property owned by the operating company but also the book value of the property investment of lessor companies, except property investment the rental of which is included in Form 100, and the investment of the operating company in improvements are not reported by the lessor company.

The names of lessor companies should be shown with their mileage and the book value of the investment; any improvements by lessee should appear opposite lessee's name in Column (d).

Trackage rights and the property of another operating carrier, part of whose property may be used by the respondent, should not be included in this form.

(2) Include in property investment figures in Column (g) all expenditures made by Federal administration, whether approved by corporation or not, it being understood that use of such figures will not prejudice any claims under the Federal control act.

(3) If any investments in property devoted to transportation service are included in accounts other than 701 and 702, and if the revenues from and the expenses of the reporting carrier, as set forth in the attached Form 100, include the amount of such investments as a separate item under Account 701—Investment in Road and Equipment (Column (c))—and attach explanatory memorandum of the facts.

(4) Show dollars only. Make necessary adjustments to maintain correct totals.

(5) Roads not under Federal control will fill out this blank in the prescribed form so that the result may be tabulated with those roads under Federal control.

Property Investment.

Atlantic Coast Line Railroad Company.

May 1, 1919.

Total Property Investment Dec. 31, 1917, less leased property		$184,890,431
Additions & Betterments Dec. 31, 1917, to May 1st, 1919		4,048,059
Estimated Cost Government Allocated Equipment May 1st, 1919		4,645,500
		$193,583,990
Book Value Material & Supplies May 1st, 1919		5,313,535
		$198,897,525
Accrued Depreciation to May 1, 1919		14,926,523
		$183,970,932
Miles of Road Owned May 1, 1919		4,758.26
Investment Per Mile Owned		$38,663.49

(Here follows table marked page 129.)

130 EXHIBIT "D."

Raleigh, N. C., June 10, 1920.

Mr. C. J. Joseph, Tax Agent,
Atlantic Coast Line Railway,
Wilmington, N. C.

DEAR SIRS:

Under authority conferred upon it by Chapter 84, Public Laws of 1919, the Commission has assessed and valued the property of the Atlantic Coast Line Railway Company at $55,929.629.

If you desire to be heard touching this assessment the Commission will hear you at its office in Raleigh any day within ten days from the date hereof.

Please bear in mind—

That the above valuation is intended to represent the actual cash value of the property on the first day of May, 1919. That all other property of every kind and nature in the State is being assessed upon the same basis;

That the valuation as above is not to be used for tax purposes until 1920;

That all tax rates are to be cut with relation to the total increase in property valuations before the valuations as above are adopted for tax purposes, and

That the tax rates are to be so cut that the total taxes collected by the State, by the County and for each special tax district cannot exceed an increase of ten per cent of the taxes collected for the year 1919.

Yours very truly, J. S. GRIFFIN,
Clerk in Charge Revaluation Assessment.

G.-E.

EXHIBIT "E."

Wilmington, N. C., July 19, 1920. ds.

North Carolina Corporation Commission,
Raleigh, North Carolina.

Assessment of Atlantic Coast Line Railroad Company's Property in North Carolina by the North Carolina Corporation Commission as of May 1st, 1919, for the year 1920.

GENTLEMEN:

131 Referring to the conference between your Board and Mr. C. J. Joseph, Tax Agent of this Company, and myself, in Raleigh. on the 16th, in regard to the assessment of the Atlantic Coast Line Railroad Company for taxes for 1920 as of May 1st, 1919:

It is the desire of this Company, as it has always been, to endeavor as far as possible to reach an amicable agreement with your honorable board upon all questions of difference arising between us, but it is

necessary that we formally protest against the assessment for the next four years of our property at $50,867,800.00, which you advise is the figure you have arrived at.

In discussing this matter with the Commission we have laid before your Board all the figures and accounts which we have and every basis upon which it is possible in my opinion to value this property.

I do not think it is fair to the railroads to take the four years of 1915, 1916, 1917 and 1918, in order to arrive at an earning basis for the reason that, as you gentlemen know, and as I have informed you again, wages of all kinds were increased by the Government as of January 1st, 1919, and, in addition to this, materials and supplies of all grades were increased during the year 1919, and this increase was so heavy that you will find it reflected materially in the revenue of the railroads, especially of this company.

The operating ratio for the year 1919 was 84.18, while for 1918 it was 74.86, and for 1917, 67.57, as you will see from the statements we have filed with you. The net operating revenue for 1919 for North Carolina is $2,087,975.05 as against $3,204,840.23 for 1918, showing a decrease in 1919 of $1,116,865.18. For this reason and for the further reason that from all indications these extraordinary wages and expenses will continue for several years to come, we think that the year 1919 should be used with the four years prior thereto in order to arrive at a proper net average. In addition to this, the statute provides that the assessment shall be based upon property as of May 1st, 1919, and, therefore, certainly all, or a portion of 1919, should be used in order to get at the value as of May 1st, 1919. The value of the Atlantic Coast Line Railroad Company's property in North Carolina based upon average net earnings, less taxes, in North Carolina, for the five years, from 1915 to 1919, inclusive, capitalized at 6%, would be $45,197,459.00. The same value based upon average net earnings, less taxes, in North Carolina, for the four years 1915 to 1918, inclusive, capitalized at 6%, would be $47,796,928.00, and the average of the above calculation amounts to $46,497,193.00.

I appreciate the fact that you have many difficulties in assessing the properties of the various railroads in this State and in
132 endeavoring to equalize them. You will note from the figures which you have on file, and from those which we have furnished you that the earnings of the Atlantic Coast Line Railroad Company in North Carolina per mile are considerably less than the earnings of the other large roads. The figures which I have given you herein for our Company are the highest that I can figure on a reasonable basis. I understood from you gentlemen in the conversation we had with you on Friday, the 16th, that your assessment was an arbitrary assessment based upon the earning capacity plus an arbitrary amount added. We cannot feel that this is a constitutional method of assessment, and on behalf of the Atlantic Coast Line Railroad Company, therefore, I respectfully enter a protest against the same.

I will thank you to kindly acknowledge receipt of this letter and advise me of your action as early as possible.

Yours very truly,

THOMAS W. DAVIS,
Assistant General Counsel.

133 EXHIBIT "F."

Atlantic Coast Line Railroad Company.

Statement Showing Gross Operating Revenue, Operating Expenses and Taxes, and Net Operating Revenue, Less Taxes, for Years 1915, 1916, 1917, and 1918, and Average of said Items for the Respective Years Named.

Entire Line.

Year.	Gross operating revenue.	Operating expenses and taxes.	Net operating revenue less taxes.
1915	$31,936,962.03	$23,731,333.79	$8,205,628.24
1916	37,322,085.42	25,904,015.30	11,418,070.12
1917	44,063,331.25	32,037,994.91	12,025,336.34
1918	56,992,329.24	45,158,302.38	11,834,026.86
	$170,314,707.94	$126,831,646.38	$43,483,061.56
Average ...	$42,578,676.98	$31,707,911.59	$10,870,765.29
Net Operating Revenue, less Taxes, Capitalized at 6%			$181,179,422.00
21.928% of $181,179,422.00 on Operated Mileage Basis			$39,729,023.66

Average Operating Miles.

Year.	Entire system.	North Carolina.
1915	4,700.03	1,039.13
1916	4,727.55	1,040.15
1917	4,780.64	1,047.36
1918	4,820.05	1,046.03
Total 4 years	19,028.27	4,172.67
Average	4,757.07	1,043.17
North Carolina's Percentage		21.928%

134 EXHIBIT "G."

Wilmington, N. C., August 15, 1921. ds.t.

Hon. A. D. Watts,
Commissioner of Revenue,
Raleigh, North Carolina.

Subject: North Carolina Taxes—Request for Reduction in Assessment.

DEAR SIR:

Supplementing my letter of August 13th in which I outlined to you our protest against the valuation and assessment of the property of the Atlantic Coast Line Railroad Company as fixed by you for the year 1921, and in support of our request for a reduction, I beg to call your attention to the following definite facts which were not specifically called to your attention in that letter:

Section 64 of the Machinery Act provides the method of fixing the valuation of tangible and intangible property.

Section 64 (*a*) provides the method by which you shall determine the valuation of tangible property of the railroad companies, and, among other things, provides:

"This value should be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case or private property."

In view of the constitutional provision that taxes shall be uniform it was the evident intention of the legislature that the real property of railroads should be assessed and valued upon the same basis as real property of private persons and corporations, else the words "and also of other conditions, to be considered as in the case of private property," would not have been inserted in section 64 of the Machinery Act.

As being conclusive of the construction for which we contend, your attention is called to the fact, for instance, that the assessment of real property in Nash County, for 1920, was $36,300,096, and the rate was 44 cents per $100. The assessment in Nash County for 1921, however, was horizontally reduced 50%, making the total assessed real property in Nash County in 1921, $18,150,048. The tax rate in Nash County for 1921 is 92 cents per $100. If the assessment upon the real property in Nash County of the Atlantic Coast Line Railroad Company, for 1921, is left at the same figures as it was in 1920, it will result in the Atlantic Coast Line Railroad Company a tax rate of 92 cents upon each $100 upon property valued 100% higher than the property owned by private individuals. In
135 other words, the assessment of the real property of the Atlantic Coast Line Railroad Company in Nash County as fixed by you, for 1921, is $1,514,269.37 and the roadway property is

$118,600.00, making a total of these two items, $1,622,869.37. While this railroad company under the assessment fixed by you would have to pay tax upon this amount at the rate of 92 cents per $100 the individual owners of real estate holding the same amount of property would pay just one half of this amount. This you can easily see is unequal taxation and is confiscation of our property which is not allowed by the constitution and laws of this state.

Yours very truly,

THOS. W. DAVIS,
Assistant General Counsel.

EXHIBIT "H."

Wilmington, N. C., August 13, 1921. ds.t.

Hon. A. D. Watts,
Commissioner of Revenue,
Raleigh, North Carolina.

Subject: North Carolina Taxes—Request for Reduction in Assessment.

DEAR SIR:

In support of the contention of the Atlantic Coast Line Railroad Company that it is entitled to a reduction in the valuation of its property this year, I beg to submit the following facts:

First. The General Assembly, in the session of 1921, provided for a review of the valuation of real property, and reduc*duc*tions in valuations, (Section 28, et seq. Machinery Act.) In nearly all the counties through which this railroad operates horizontal reductions in the valuation of real property have been made by the local assessors, under authority of the State Board of Equalization. Section 64 of the Machinery Act provides that you must find the value of all the property of the railroads, including tangible and intangibl- property, but that the latter must be assessed separately. The Act provides that the value of the franchise shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public, (the value of the physical property being deducted), as evidenced by the market value of the capital stock certificates of indebtedness, bonds or other securities,
136 the value of which is based upon the earning capacity of the property. In June the Atlantic Coast Line Railroad Company filed with you exhibits showing the true valuation of its property, according to the tax laws of North Carolina. These exhibits showed the *the* aggregate value of this Company's property based upon the value of its stocks and bonds, and also upon its earning capacity.

The valuation placed upon this company's property by the Tax Commission last year was $50,867,800, of which $39,620,930 was tangible property ascertained by finding the total cost and investment

account of the Atlantic Coast Line Railroad Company for all of the states and allocating North Carolina's proportion on a mileage basis, and deducting the amount so found—that is, $39,620,930, from the total valuation fixed by the commission, leaving an intangible value of $11,246,870.

The assessment and valuation found by you for this year is the same as fixed by the Commission for the year 1920, and I assume, of course, that it was based upon the same figures as above recited.

We respectfully contend that the tangible valuation and the total valuation should not be the same as last year, because if it was based upon the method above outlined, the value as of May 1st, 1921, would be substantially reduced.

The assessed valuation of the tangible and intangible property of this Company for the year 1920, was $50,867,800. The earnings of the company in the State of North Carolina, capitalized at 6%, amounted to $41,730,199. The value of the stocks and bonds, par value, allocated to North Carolina, on mileage basis, amounts to $41,-150,361, the par value being $100, and the market value being upon the stock $81 per share and for the bonds $78 per $100, and if the value of the stocks and bonds allocated to North Carolina, on mileage basis, was figured on the market value, as the statute provides, it would be much less than $41,150,361.

If the value is to be determined upon the capitalization of the earnings, the value of this Company's property would be $41,730,199 or $2,109,269 more than the assessed value of the tangible property for the year 1920, which would be the intangible valuation.

If it is to be assessed upon the value of its stocks and bonds, without deducting the large amount of money invested by this company in other states in costly terminals, none of which are in use in North Carolina, or properly chargeable to North Carolina, the value would be $41,150,361, or $1,529,432 more than the assessed value of the tangible property for the year 1920, the latter figures of
137 which, upon this basis, would be the *the* correct value of the intangible property.

So that, even if the tangible property of this company was assessed for the year 1921 at $39,620,930, the amount for which it was assessed in 1920, the intangible assessed valuation should not in any event be greater than $2,109,269.

Upon the other hand, if the Commissioner determines, in capitalizing the earnings at 6%, the compensation paid this company by the Federal government should be the measure of the earnings, without deductions for corporate expenses or taxes, then the valuation of this company's property, tangible and intangible, would be $36,227,090, or $3,393,840 less than the assessed value of the tangible property for the year 1920.

But, as the Legislature of 1921 authorized a horizontal reduction in real estate in the various counties in the State, and as the State Board of Equalization, by resolution adopted at its meeting on June 15th, 1921, copies of which were sent by the Commissioner of Revenue to the clerks of the various boards of county commissioners, approved the resolutions of the various county boards, making hori-

zontal reductions in *in* real property in such counties, the railroad companies in this state are entitled to have the same reductions in the value of their real property as *was* made in said counties, and the Atlantic Coast Line Railroad Company protests against any assessment against its property which does not give *it to* the same reduction in real property as allowed to the real property owners in the counties in which its railroad operates.

Taking the assessed value of the entire property of the Atlantic Coast Line Railroad Company, for the year 1920, $50,867,800, there should first be deducted the intangible property, $11,246,870, and the amount of the rolling stock, $6,659,023, amounting to $17,905,893, this would leave the real property at $32,961,907, and from this real property there should then be deducted $1,598,577, the real property which was assessed locally, and which has already received its horiontal reduction, in accordance with the statute, and this would leave the real property, assessed by you, $31,363,330.

We contend that we should have the same horizontal reduction applied to this real property as was applied to the owners of the real property in the counties through which the Atlantic Coast Line Railroad Company runs in North Carolina. In arriving at this percentage the proportionate amount of $31,363,330 should be allocated to each county on mileage basis, and that proportion allocated to each county should be reduced by the horizontal percentage reduction allowed in each county through which this railroad runs.

138 This would then leave the real property of this company assessed by you, but reduced as above, $25,638,617, which we claim and contend is the highest amount which under the law you are entitled to assess the property of this company.

For your information, and for the record in this case, I attach hereto a memorandum, Exhibit 1, showing the assessed value of the property for 1920 throughout the counties in which this railroad runs, including the amount of taxes paid on 1920 rates, the percentage reductions authorized, the valuation in these counties on the reduced percentages in 1921, a copy of this having heretofore been filed with you.

I also hand you two sheets, marked Exhibit 2, showing the method of arriving at the valuation of this company's property upon the basis of capitalization of earnings, Federal compensation and stocks and bonds.

Exhibit 3. Statement showing investment account, Federal compensation, and capitalizaton upon Federal compensation, capitalization upon the earnings, and allocation of the stocks and bonds.

I also hand you Exhibit 4, which gives in detail the ass-ssment of 1921 of this company's property allocated to each county and town, and the same assessment arrived at by percentage reduction on the real estate pro-rated per mile.

In addition to this, I hand you Exhibit 5, showing the calculations set forth in this letter, the value of our property, the value per mile of both real and personal, the rolling stock, etc., which sheets give you the various methods of figuring the value of the property as

EXHIBIT NO. 1.

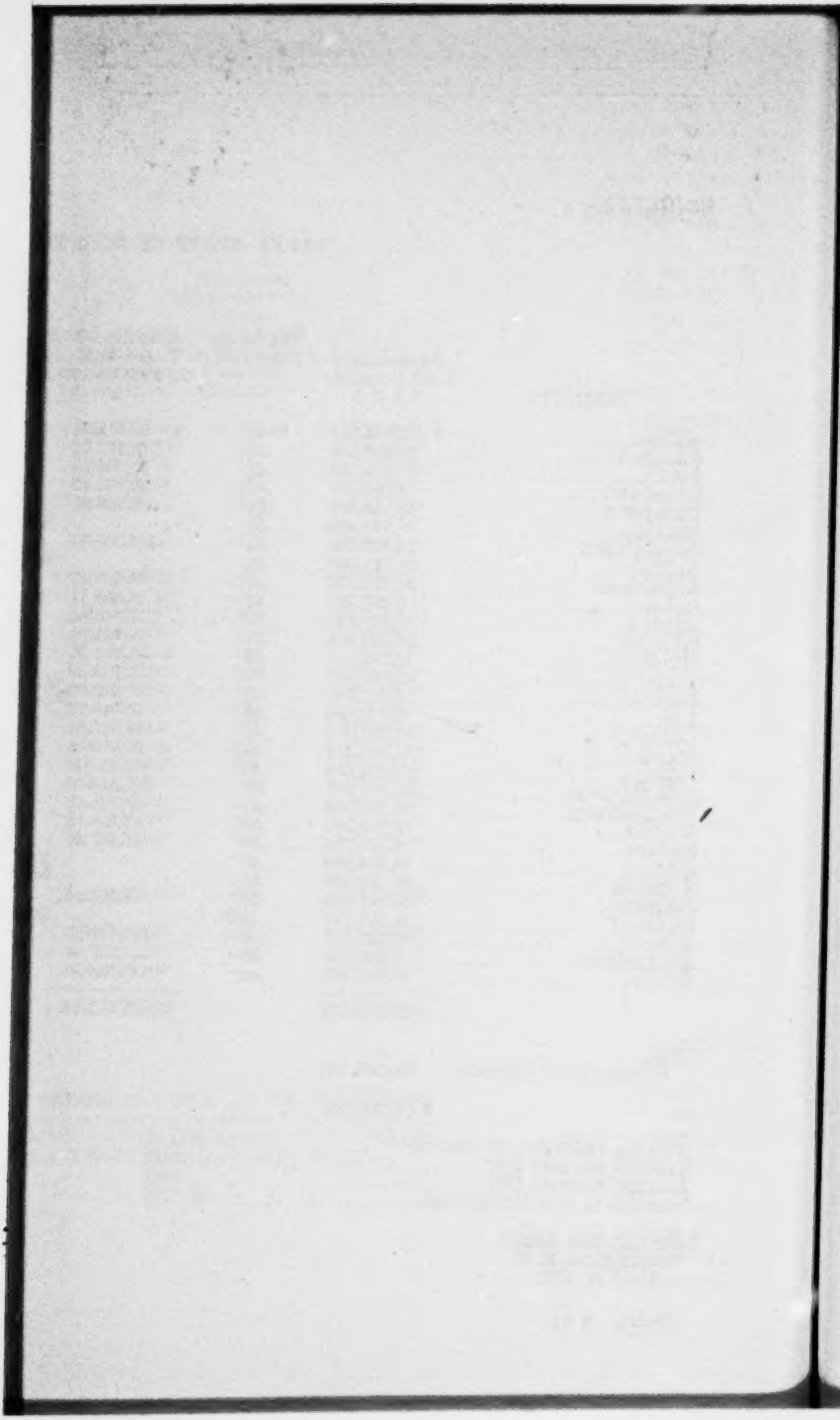
TAXES—STATE OF NORTH CAROLINA

COUNTY	Assessment Real Property 1920	Tax Rates Paid 1920	Amount of Taxes Paid on 1920 Rates	Percentages of Reduction Authorized by State	Valuation 1921 on Reduced Percentages	Tax Rates Necessary to Provide Equivalent in Taxes on Reduced Valuation	
Anson	$ 13,894,811	$0.40	$ 55,539.24	20%	$ 10,707,849	$0.50	$ 53,539.24
Beaufort	29,207,006	.59	172,321.34	25%	21,905,255	.79	172,321.34
Bertie	13,958,782	.47	65,606.28	25%	10,469,087	.63	65,606.28
Brunswick	7,953,027	.47	37,379.23	None	7,953,027	.47	37,379.23
Craven	28,745,458	.56	82,108.99	None	15,789,229	.52	82,108.99
Cumberland	20,522,089	.61	125,184.44	Revaluation 10%	18,469,880	.67½	125,184.44
Duplin	24,211,549	.41		Revaluation			
Edgecombe	34,955,056	.257	89,834.49	50%	17,477,528	.51	89,834.49
Gates	5,631,242	.46	25,903.71	10%	5,068,118	.51	25,903.71
Halifax	35,636,872	.76	270,840.23	40%	21,382,124	1.26⅔	270,840.23
Harnett	20,823,234	.34	70,798.99	None	20,823,234	.34	70,798.99
Hertford	10,747,168	.39	41,913.95	33⅓%	7,164,779	.59	41,913.95
Johnston	42,060,148	.26	109,278.38	33⅓%	28,020,099	.39	109,278.38
Jones	8,447,940	.32	27,033.09	30%	5,631,893	.48	27,033.09
Lee	8,706,469	.46	40,049.76	33⅓%	5,804,313	.69	40,049.76
Lenoir	33,857,010	.44	148,970.84	25%	25,392,757	.59	148,970.84
Martin	15,613,311	.40⅓	62,983.68	33⅓%	10,408,874	.61	62,983.68
Nash	36,300,096	.44	159,720.42	50%	18,150,048	.88	159,720.42
New Hanover	37,517,377	.60	225,104.20	None	37,517,377	.60	225,104.20
Northampton	12,367,534	.51	63,074.42	33⅓%	8,245,023	.77	63,074.42
Onslow	10,907,997	.44	47,555.18	20%	8,646,397	.55	47,555.18
Pender	8,492,798	.50	42,463.99	25%	6,369,599	.66⅔	42,463.99
Pitt	44,254,598	.43		Revaluation			
Robeson	48,024,999	.34		Revaluation			
Sampson	22,717,990	.37	84,056.56	25%	17,038,492	.49	84,056.56
Scotland	21,319,716	.1542		Revaluation			
Wayne	47,323,132	.32	151,434.02	33⅓%	31,548,755	.48	151,434.02
Washington	7,468,873	.56	41,825.69	25%	5,601,654	.75	41,825.69
Wilson	40,401,300	.46	185,845.98	33⅓%	26,934,200		185,845.98
	$ 707,216,601		$2,424,822.10		$ 392,519,547		$2,424,822.10
LESS: "Revaluation" Counties	166,556,260						
	$ 540,660,341						

Average reduction in valuation.....27.40%
Average tax rate 1920......4485
Average tax rate 1921......6177
Increase in average tax rate.....37.77%

NOTE: The assessments as shown for the year 1920 are taken from the report of the State Tax Commission on Revaluation to His Excellency, T. W. Bickett, Governor of North Carolina, August 10, 1920.

Office of Tax Agent,
Wilmington, N. C.
June 21, 1921.



heretofore outlined, and upon which we claim should be the assessed value of this company's property.

I call your attention to the following cases, under which we claim these reductions and equalization of our property.

Washington Water Power Company v. Koteenie County, 270 Federal 369, Advance Sheets, April 21, 1921,
Green v. Railroad, 244 U. S. 501,
Cummings v. National Bank, 101 U. S. 153,
Taylor v. L. L. N. Railroad, 88 Federal 350.

Yours very truly,

THOS. W. DAVIS,
Assistant General Counsel.

(Here follows table marked page 139.)

140 EXHIBIT No. 2.

Atlantic Coast Line Railroad Company, State of North Carolina, Year 1921.

Tangible Property.

The State Tax Commission, year 1920, required the Railroads whose Interstate Commerce Commission valuation- have not been completed to file with them a copy of their investment accounts to be used for determining the amount of returns they are entitled to earn on their properties.

The Atlantic Coast Line is one of the corporations whose valuation was not completed (and is not up to date), filed with the Tax Commission a copy of their investment account. The Tax Commission assessed the tangible property of this Company by allocating to North Carolina, on a basis of mileage owned, the investment in Road and Equipment, less accrued depreciation, as shown in the statement filed with the Interstate Commission, thereby assessing the tangible property in North Carolina at the average cost per mile of the entire system, making no deduction on account of large and costly terminals at Pinners Point, Virginia, Charleston, S. C., Savannah and Brunswick, Ga., Jacksonville and Tampa, Florida, etc., causing a greater excess value per mile of line outside of this state as compared with those inside. The assessed value or reproductive value shows the cost instead of the present value and worth. The amount of returns a corporation is allowed to earn upon its property is based on what is put into the property as investment value, while taxes are largely based upon what is taken out as income.

This Company returned its tangible property to the State Tax Commission for the year 1920 at a valuation of $32,188,328. which was 102.56 per cent more than it was assessed by the Commission, year 1919. The Commission assessed the tangible property year 1920 at a valuation of $39,620,930, or 140.33 per cent more than assessed by them in 1919, when the Investment in Road and Equipment to December 31st, 1920, distributed to North Carolina on a basis of mileage owned was $39,639,547, or $18,617 more than assessed, showing that the assessed value of the tangible property is the actual cost of the property less accrued depreciation.

Tangible and Intangible Property.

Under the law the Railroads must be taxed as an indivisible unit, successful corporations have a franchise or intangible valua-
141 tion which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property.

Federal Compensation.

The United States Government took over the control of this Company's property January 1st, 1918, and operated same to March 1st, 1920. The yearly compensation paid for the use of this Company's property was $10,180,915.15, from this amount the expenses and taxes of the Corporate Company were deducted, the result was capitalized as six per cent and distributed to the State of North Carolina on the proportion of mileage operated in the state; this would give the State the real value of the operative property. The average for two years would be $34,531,726.

If the Compensation paid by the Government for the use of the property was capitalized at six per cent, without taking the Corporate Company's expenses and taxes, and allocated to North Carolina on a basis of mileage operated the valuation would be $36,227,090.00 or $3,393,840 less than the assessed value of the tangible property year 1920.

Capitalization of Earnings.

Take the average Net Operating Revenue, less Taxes, for the last five years, 1916 to 1920, inclusive, in the State of North Carolina as shown in the annual Reports to the Corporation Commission and capitalize at six per cent, the valuation would be $41,730,199.00 or $2,109,269.00 more than the assessed value of the tangible property year 1920.

Stocks and Bonds.

The stocks and bonds of a Railroad Company represents the value of all property of the Company whether devoted to operations or not; lands, real estate, manufacturing plants, compress warehouses, stocks and bonds of other companies, etc. The corporate money value of a Railroad Company and the money value incorporated in the property devoted to operation are two different magnitudes, sometimes differing quantitively by millions of dollars. No deductions are made on account of the large and costly terminals at Pinners Point, Virginia, Charleston, S. C., Savannah and Brunswick, Ga., Jacksonville and Tampa, Florida, causing a great excess value per
142 mile of line outside of this state as compared with those inside. Without the above deductions the stocks and bonds and notes allocated to North Carolina on a basis of miles owned would give us a valuation of $41,150,361.90 or $1,529,432.00 more than the assessed value of the tangible property year 1920.

If the Commissioner of Revenue assessed the tangible property of this Company, for the year 1921, at the same valuation as assessed year 1920, viz: $39,620,930.00, the intangible assessed valuation should not be greater than $2,109,269.00 as shown in the capitalization of the average net earning less taxes for the last five years, capitalized at six per cent. If we take the Stock and Bonds plan at par

value (when we should use the market value which shows its stock is worth 81 and its General Mortgage bonds are 78) and distribute the aggregate value to North Carolina on a basis of miles owned, the assessed value of the tangible and intangible property should be $41,150,362.00, deducting the tangible assessed value year 1920, viz: $39,620,930, we have the assessed value of the intangible property at $1,529,432.

We respectfully request that if the tangible property is assessed year 1921 at the same valuation as assessed year 1920, that the franchise or intangible property be assessed at a valuation not greater than $2,109,269.00, making the aggregate assessed value of the tangible and intangible property $41,730,199.

Office of Tax Agent, June 13, 1921. jt. Wilmington, N. C.

143 EXHIBIT 3.

Atlantic Coast Line Railroad Company, State of North Carolina, Year 1921.

The State Tax Commission assessed the valuation of this Company's tangible property, for the year 1920, at $39,620,930.00; intangible property at $11,246,870.00, aggregate assessed valuation at $50,867,800.00.

Investment.

According to the annual report for the year ending December 31, 1920, of the Board of Directors to the Stockholders of the Company, the investment in Road and Equipment of the entire system, less accrued depreciation, distributed to the State of North Carolina on the basis of miles owned, is $39,639,547.96, as follows:

Investment in Road & Equipment, Dec. 31, 1920		$197,463,730.25
Accrued Depreciation, Dec. 31, 1920		16,238,932.91
		$181,224,797.34
Miles of Road Owned Dec. 31, 1920		4,750.85
Investment Per Mile Owned		$38,145.76
Miles of Road Owned in North Carolina, Dec. 31, 1920		1,039.16
Investment in North Carolina on Mileage Basis		$39,639,547.96

Federal Compensation.

The annual compensation guaranteed this Company under Section 1 of the Federal Control Act is herewith shown. This compensation (based upon the earnings for the three years), less corporate expenses and taxes, capitalized at six per cent and distributed to North Carolina on a basis of operation mileage would give the state the real value of the operative property based upon earnings during Federal Control.

	Year 1918.	Year 1919.
Annual Compensation under Federal Control Act	$10,180,915.15	$10,180,915.15
Corporate Expenses and Taxes	470,607.80	595,993.49
	$9,710,307.35	$9,584,921.66
Capitalized at Six Per Cent	$161,838,454.00	$159,748,694.00
Miles Operated, Entire System	4,839.76	4,893.65
Miles Operated in North Carolina	1,145.72	1,044.76
North Carolina's Proportion of Miles Operated	21.60%	21.35%
North Carolina's Proportion	$34,957,106.00	$34,106,346.00

Capitalization of Earnings.

If the assessment of this Company's property in North Carolina was made upon the average net operating revenue, less taxes, for the last five years, as shown in the North Carolina Corporation Commission's Reports, and capitalized at six per cent, the assessed value should be as follows:

Year.	Operating revenue.	Operating expenses.	Net operating revenue.	Taxes.	Net operating revenue, less taxes.
1916 ...	$10,217,647.65	$6,587,793.71	$3,629,853.94	$468,811.78	$3,161,042.16
1917 ...	11,584,617.49	7,827,881.00	3,756,736.49	487,028.01	3,269,708.48
1918 ...	14,816,308.86	11,092,458.61	3,723,850.25	519,010.02	3,204,840.23
1919 ...	17,376,471.19	14,605,475.72	2,770,995.47	683,020.42	2,087,975.05
1920 ...	18,623,284.36	17,334,790.66	1,288,443.70	492,949.92	795,493.78
					$12,519,060.70
Average Net Operating Revenue, less taxes					$2,503,811.94
Capitalized at six per cent					41,730,199.00

Stocks and Bonds.

If the assessment of this Company's property in North Carolina was made upon the par value of its capitalization and allo-
144 cated to North Carolina on a basis of miles owned, the assessed values should be as follows:

Par Value of the Stocks and Bonds Are *Used When the Market Value of Its Stock on May* 1, 1921, *Was* 81 *and Its General Unified Mortgage Bonds Were* 78.

Capital Stock	$68,782,900.00
Mortgage Bonds	102,124,000.00
Income Bonds	15,000.00
Miscellaneous Obligations	4,580,555.00
Trust Bonds	6,629,500.00
Notes	6,000,000.00
	$188,131,955.00
Miles of Road Owned December 31, 1920	4,750.85
Average Value Per Mile	$39,599.64
Miles Owned in North Carolina, December 31, 1920	1,039.76
Value in North Carolina on Mileage Basis	$41,150,361.90

Office of Tax Agent, June 7, 1921-jt.

(Here follow tables marked pages 145 and 146.)

Personal Property			[illegible]	[illegible]
Local Property			[illegible]	[illegible]
	197,711.88		[illegible]	[illegible]
WAYNE:				
39.28 Miles	1,973,473.75	Less 33⅓-16⅔%	[illegible]	1,[illegible]
Roadway Property	66,200.00	Less 33⅓-16⅔%	55,167.00	55,167.00
Personal Property			740,213.44	740,213.44
Local Property	5,553.00		5,553.00	5,553.00
	2,045,226.75		1,[illegible]	1,804,[illegible]
WILSON:				
31.44 Miles	1,579,582.90	Less 33⅓ & 10%	684,919.26	603,387.62
Roadway Property	84,690.00		74,098.00	74,098.00
Personal Property			592,472.32	592,472.32
Local Property	20,050.00		20,050.00	20,050.00
	$ 1,684,322.90		$ 1,371,539.58	$ 1,490,007.94

8-9-21 mt

PERCENTAGE OF REDUCTION AS MADE IN THE VARIOUS COUNTIES

Anson, 20% General, 10% for Towns of Morven, McFarlan and Wadesboro,
Beaufort, 25%,
Bertie, 25%,
Brunswick, None,
Columbus, None,
Cumberland, 10%,
Craven, Revaluation, None,
Duplin, Revaluation, None,
Edgecombe, 50% General, 20% Rocky Mount, 25% for Towns of Conetoe, Princeville, Tarboro and Whitakers,
Gates, 10%,
Halifax, 40%,
Harnett, None,
Hertford, 33⅓%,
Johnston, 33⅓%,
Jones, 30%,
Lee, 33⅓%,
Lenoir, 25%,
Martin, 33⅓%,
Nash, 50% General, 25% Rocky Mount, 20% for Towns of Battleboro, Nashville, Sharpsburg and Spring Hope,
New Hanover, None,
Northampton, 33⅓%,
Onslow, 20%,
Pender, 25%,
Pitt, Revaluation, None,
Robeson, Revaluation, None,
Sampson, 25%,
Scotland, Revaluation, None,
Washington, 25%,
Wayne, 33⅓% General, 16⅔% for Towns of Fremont, Goldsboro, Mt. Olive and Pikeville,
Wilson, 33⅓% General, 10% for Towns of Wilson and Elm City.

Office of Tax Agent,
Wilmington, N. C.,
August 9, 1921.

Stocks and Bonds.

If the assessment of this Company's property in North Carolina was made upon the par value of its capitalization and allo-
144 cated to North Carolina on a basis of miles owned, the assessed values should be as follows:

Par Value of the Stocks and Bonds Are *Used When the Market Value of Its Stock on May* 1, 1921, *Was* 81 *and Its General Unified Mortgage Bonds Were* 78.

Capital Stock	$68,782,900.00
Mortgage Bonds	102,124,000.00
Income Bonds	15,000.00
Miscellaneous Obligations	4,580,555.00
Trust Bonds	6,629,500.00
Notes	6,000,000.00
	$188,131,955.00

Miles of Road Owned December 31, 1920	4,750.85
Average Value Per Mile	$39,599.64
Miles Owned in North Carolina, December 31, 1920	1,039.76
Value in North Carolina on Mileage Basis	$41,150,361.90

Office of Tax Agent, June 7, 1921-jt.

(Here follow tables marked pages 145 and 146.)

EXHIBIT 4

ATLANTIC COAST LINE RAILROAD COMPANY
TAXES—STATE OF NORTH CAROLINA—1921

	1 1921 Assessment		2 1921 Assessment Arrived at with Percentage Reduction on Real Property	3 1921 Assessment with Percentage Reductions Prorated Per Mile
Total Valuation	$50,687,800.00		$45,143,097.31	$45,143,097.31
Valuation of Property listed locally	1,598,577.00		1,598,577.00	1,598,577.00
	49,289,223.00		43,544,510.31	43,544,510.31
Roadway Property in Incorporated Towns	1,530,550.00		1,358,375.00	1,358,375.00
	47,758,673.00		42,186,135.31	42,186,135.31
PERSONAL PROPERTY:				
Intangible $11,246,870.00				
Rolling Stock 6,659,023.00			17,905,893.00	17,905,893.00
			24,280,242.31	24,280,242.31
950.19 miles at $50,241.18 per mile	$47,758,673.00			
Personal Property Per Mile			18,844.53	18,844.53
Real Property Per Mile				25,553.05
COUNTIES:				
ANSON:				
14.01 miles				
Roadway Property	703,879.13	Less 20 & 10%	364,102.17	357,997.66
Personal Property	9,640.00	Less 20 & 10%	8,676.00	8,676.00
Local Property			264,012.15	264,012.15
	21,500.00		21,500.00	21,500.00
	735,019.13		658,290.32	652,186.03
BEAUFORT:				
6.60 Miles				
Roadway Property	231,591.99	Less 25%	155,413.34	168,649.78
Personal Property	32,525.00	Less 25%	24,394.00	24,394.00
Local Property			124,374.20	124,374.20
	2,925.00		2,925.00	2,925.00
	267,041.99		307,106.54	320,342.98
BERTIE:				
12.95 Miles				
Roadway Property	650,623.48	Less 25%	304,939.88	330,911.65
Personal Property	7,205.00	Less 25%	5,404.00	5,404.00
Local Property			244,036.98	244,036.98
	607,828.48		554,380.86	580,352.63
BRUNSWICK:				
18.2 Miles				

COLUMBUS:				
75.31 Miles	3,783,663.46	None	2,804,421.60	1,804,289.85
Roadway Property	42,695.00		42,695.00	42,695.00
Personal Property			1,419,181.86	1,419,181.86
Local Property	500.00		500.00	500.00
	3,826,848.46		3,826,848.46	3,306,766.71
CRAVEN:				
9.40 Miles	476,789.00	Revaluation no deduction	297,954.11	242,498.10
Roadway Property	59,475.00		59,475.00	59,475.00
Personal			178,834.89	178,834.89
Local Property	29,550.00		29,550.00	29,550.00
	565,814.00		565,814.00	510,357.99
CUMBERLAND:				
97.07 Miles	2,807,284.34	Less 10%	1,612,626.04	1,456,312.21
Roadway Property	105,058.00	Less 10%	94,548.00	94,548.00
Personal Property			1,075,457.63	1,075,457.63
Local Property	38,613.00		38,613.00	38,613.00
	3,010,930.34		2,821,244.67	2,666,930.84
DUPLIN:				
37.27 Miles	1,872,488.99	Revaluation no deduction	1,170,153.06	962,361.82
Roadway Property	23,790.00		23,790.00	23,790.00
Personal Property			702,335.93	702,335.93
Local Property	26,735.00		26,735.00	26,735.00
	1,923,013.99		1,923,013.99	1,705,222.75
EDGECOMBE:				
44.40 Miles	$ 2,230,708.59	Less 50, 25 & 20%	$ 799,095.66	$ 1,134,555.07
Roadway Property	80,655.00	Less 50, 25 & 20%	62,575.00	62,575.00
Personal Property			536,697.43	536,697.43
Local Property	521,132.00		521,132.00	521,132.00
	2,832,495.59		2,219,500.09	2,554,959.50
GATES:				
14.98 Miles	750,101.01	Less 10%	421,876.70	381,506.69
Roadway Property				
Personal Property			281,349.13	281,349.13
Local Property	25.00		25.00	25.00
	750,126.01		703,250.83	662,880.82
HALIFAX:				
60.59 Miles	3,044,113.30	Less 40%	1,141,393.75	1,548,256.95
Roadway Property	63,525.00	Less 40%	38,115.00	38,115.00
Personal Property			1,141,790.38	1,141,790.38
Local Property	20,581.00		20,581.00	20,581.00
	3,128,169.30		2,341,880.13	2,748,695.33
HARNETT:				
22.99 Miles	1,155,044.96	None	721,908.88	597,464.27
Roadway Property	23,450.00		23,450.00	23,450.00
Personal Property			433,236.05	433,236.05
Local Property	200.00		200.00	200.00
	1,178,694.96		1,178,694.93	1,044,350.32
HERTFORD:				
14.71 Miles	739,047.96	Less 33⅓%	307,896.41	375,885.02
Roadway Property	25,600.00	Less 33⅓%	17,067.00	17,067.00
Personal Property			277,208.34	277,208.34
Local Property				
	764,647.96		602,166.75	670,155.36
JOHNSTON:				
43.10 Miles	2,165,895.20	Less 33⅓%	902,130.44	1,101,336.11
Roadway Property	35,442.00		23,628.00	23,628.00
Personal Property			812,199.54	812,199.54
	2,200,837.20		1,737,957.98	1,937,163.65
JONES:				
12.17 Miles	643,584.89	Less 30%	281,094.13	226,823.16
Roadway Property	3,750.00	Less 30%	2,625.00	2,625.00
Personal Property			241,021.84	241,021. 4
Local Property				
	646,334.89		524,740.97	570,470.00
LEE:				
8.31 Miles	417,504.41	Less 33⅓%	178,937.38	212,345.50
Roadway Property	4,700.00	Less 33⅓%	3,133.00	3,133.00
Personal Property			156,598.34	156,598.34
Local Property	833.00		833.00	833.00
	423,037.41		334,501.72	372,909.84
LENOIR:				
11.03 Miles	554,160.42	Less 25%	259,728.71	281,949.79
Roadway Property	25,025.00	Less 25%	18,769.00	18,769.00
Personal Property			207,855.47	207,855.47
Local Property				
	579,185.42		486,353.18	508,474.26
MARTIN:				
58.71 Miles	2,648,212.80	Less 33⅓%	1,103,278.21	1,346,900.92
Roadway Property	22,825.00	Less 33⅓%	15,217.00	15,217.00
Personal Property			993,295.48	993,295.48
Local Property				
	2,671,037.80		2,111,790.69	2,355,413.40
NASH:				
30.14 Miles	1,514,269.37	Less 50, 25 & 20%	554,852.04	770,168.58
Roadway Property	118,600.00	Less 50, 25 & 20%	80,013.00	80,013.00
Personal Property			567,974.44	567,974.44
Local Property	6,400.00		6,400.00	6,400.00
	1,639,269.37		1,209,239.48	1,424,556.02
NEW HANOVER:				
30.15 Miles	1,514,771.78	None	946,698.90	770,424.11
Roadway Property	559,000.00	None	559,000.00	559,000.00
Personal Property			568,162.88	568,162.88
Local Property	878,025.00		878,025.00	878,025.00
	2,951,796.78		2,951,796.78	2,775,611.99
NORTHAMPTON:				
8.88 Miles	$ 446,141.88	Less 33⅓%	$ 185,888.10	$ 226,910.75
Roadway Property				
Personal Property			167,339.73	167,339.73
Local Property				
	1.880,. 314484,4		353, 2948	07.83
ONSLOW:				
	1,824,357.45	Less 20%	912,009.82	927,630.90

NASH:				
20.14 Miles	1,514,269.37	Less 50, 25 & 20%	554,822.04	770,169.58
Roadway Property	118,600.00	Less 50, 25 & 20%	80,013.00	80,013.00
Personal Property			567,974.44	567,974.44
Local Property	6,400.00		6,400.00	6,400.00
	1,639,269.37		1,209,209.48	1,424,556.02
NEW HANOVER:				
20.15 Miles	1,514,771.78	None	946,606.90	770,424.11
Roadway Property	559,000.00	None	559,000.00	559,000.00
Personal Property			568,162.88	568,162.88
Local Property	878,025.00		878,025.00	878,025.00
	2,951,796.78		2,951,796.78	2,775,611.99
NORTHAMPTON:				
8.88 Miles	$ 468,141.88	Less 33⅓%	$ 185,866.10	$ 226,910.75
Roadway Property				
Personal Property			167,339.73	167,339.73
Local Property				
	1,000,. 314494,4		353, 2598	07.83
ONSLOW:				
36.31 Miles	1,684,257.45	Less 20%	912,009.82	927,630.90
Roadway Property	6,750.00	Less 20%	5,400.00	5,400.00
Personal Property			694,245.18	694,245.18
Local Property				
	1,691,007.45		1,601,655.00	1,617,476.088
PENDER:				
69.01 Miles	3,165,696.95	Less 25%	1,483,727.11	1,510,097.33
Roadway Property	10,500.00	Less 25%	7,875.00	7,875.00
Personal Property			1,187,294.14	1,187,294.14
Local Property	12,951.00		12,951.00	12,951.00
	3,189,147.95		2,691,947.25	2,618,317.47
PITT:				
56.04 Miles	2,815,515.98	Revaluation no reduction	1,759,469.17	1,431,992.58
Roadway Property	38,275.00		38,275.00	38,275.00
Personal Property			1,056,047.76	1,056,047.76
Local Property	180.00		180.00	180.00
	2,853,970.98		2,853,970.98	2,526,495.34
ROBESON:				
80.89 Miles	4,064,009.25	Revaluation no reduction	2,539,674.92	2,086,965.86
Roadway Property	53,215.00		53,215.00	53,215.00
Personal Property			1,524,334.33	1,524,334.33
Local Property	750.00		750.00	750.00
	4,117,974.25		4,117,974.25	3,665,265.19
SAMPSON:				
49.09 Miles	2,466,339.73	Less 25%	1,155,946.09	1,254,398.90
Roadway Property	16,975.00	Less 25%	12,731.00	12,731.00
Personal Property			925,078.28	925,078.28
Local Property	8,524.00		8,524.00	8,524.00
	2,491,838.73		2,102,279.37	2,200,732.18
SCOTLAND:				
10.05 Miles	504,924.06	Revaluation no reduction	315,536.28	256,607.60
Roadway Property	3,200.00		3,200.00	3,200.00
Personal Property			189,397.88	189,397.88
Local Property				
	508,124.06		508,124.06	449,205.63
WASHINGTON:				
3.78 Miles	199,911.86	Less 25%	89,009.42	96,590.18
Roadway Property	7,800.00	Less 25%	5,850.00	5,850.00
Personal Property			71,232.63	71,232.63
Local Property				
	197,711.86		166,092.05	173,672.81
WAYNE:				
39.28 Miles	1,973,473.75	Less 33⅓-16⅔%	966,636.99	1,003,723.58
Roadway Property	66,200.00	Less 33⅓-16⅔%	55,167.00	55,167.00
Personal Property			740,213.44	740,213.44
Local Property	5,553.00		5,553.00	5,553.00
	2,045,226.75		1,667,570.43	1,804,656.97
WILSON:				
31.44 Miles	1,579,562.90	Less 33⅓ & 10%	694,919.26	803,387.62
Roadway Property	94,690.00		74,098.00	74,098.00
Personal Property			592,472.32	592,472.32
Local Property	20,050.00		20,050.00	20,050.00
	$ 1,694,322.90		$ 1,371,539.58	$ 1,490,007.94

8-9-21 mt

PERCENTAGE OF REDUCTION AS MADE IN THE VARIOUS COUNTIES

Anson, 20% General, 10% for Towns of Morven, McFarlan and Wadesboro,
Beaufort, 25%,
Bertie, 25%,
Brunswick, None,
Columbus, None,
Cumberland, 10%,
Craven, Revaluation, None,
Duplin, Revaluation, None,
Edgecombe, 50% General, 20% Rocky Mount, 25% for Towns of Conetoe, Princeville, Tarboro and Whitakers,
Gates, 10%,
Halifax, 40%,
Harnett, None,
Hertford, 33⅓%,
Johnston, 33⅓%,
Jones, 30%,
Lee, 33⅓%,
Lenoir, 25%,
Martin, 33⅓%,
Nash, 50% General, 25% Rocky Mount, 20% for Towns of Battleboro, Nashville, Sharpsburg and Spring Hope,
New Hanover, None,
Northampton, 33⅓%,
Onslow, 20%,
Pender, 25%,
Pitt, Revaluation, None,
Robeson, Revaluation, None,
Sampson, 25%,
Scotland, Revaluation, None,
Washington, 25%,
Wayne, 33⅓% General, 16⅔% for Towns of Fremont, Goldsboro, Mt. Olive and Pikeville,
Wilson, 33⅓% General, 10% for Towns of Wilson and Elm City.

Office of Tax Agent,
Wilmington, N. C.,
August 9, 1921.

EXHIBIT 5

ATLANTIC COAST LINE RAILROAD COMPANY
TAXES—STATE OF NORTH CAROLINA—YEAR 1931

		Assessed 1931	Less Percentage Reduction on Real Estate	Decrease
Assessed Year 1930.		$50,867,800.00	$45,143,087.31	$5,724,712.69
Local Property		1,566,577.00	1,566,577.00	
Assessed Year 1931, less Local		49,269,223.00	43,544,510.31	5,724,712.69
Roadway Property.		1,550,550.00	1,368,375.00	172,175.00
Distribution Per Mile		47,718,673.00	42,166,135.31	5,552,537.69
Personal Property.			17,905,893.00	
			$24,260,242.31	
Value Per Mile		50,241.81	25,553.05	
Value Per Mile personal			18,844.53	
			44,397.58	
Intangible		11,346,870.00		
Rolling Stock		6,659,023.00		
Assessment	$ 50,867,800.00	17,905,893.00	$22,961,907.00	
Less % on Real Estate	45,143,087.00		37,237,194.00	
	5,724,713.00		5,724,713.00	
Per Cent Decrease.	11.25%		17.37%	

	Value	
Assessed	$ 50,867,800.00	
Less % on Real Estate	45,143,087.00	5,724,712.00
Annual Compensation	36,227,090.00	14,640,710.00
Capitalization of Earnings	41,730,199.00	9,127,601.00
Stocks and Bonds	41,150,361.00	9,717,439.00

The property of the Atlantic Coast Line Railroad in North Carolina is assessed as follows:

TANGIBLE PROPERTY:			
Real Assessed Local	$ 1,566,577.00		
Assessed Board	31,269,220.00		
Personal Rolling Stock	6,659,023.00	39,630,920.00	
Intangible Property		11,346,870.00	$50,867,800.00
Reduce the Real Property (exclusive of local Property which was reduced by the counties in which it is located), the same percentage of reduction in each county allowed by the State Board of Equalization in each county we would have	31,269,220.00 1,566,577.00		
Real Property assessed locally		$ 25,636,617.00	
Personal Property, (Rolling Stock.)		1,566,577.00	
Tangible Property		6,659,023.00	
Intangible Property		$33,896,217.00	
Under the Stock and Bond plan the value of tangible and intangible property,		11,346,870.00	$45,143,087.00
Tangible Property (less percentage of reduction)		33,896,217.00	
Intangible Property		7,254,144.00	41,150,361.00
Under the Capitalization of Net Earnings plan the value of the tangible and intangible property, Tangible Property (less percentage of reduction)		$33,896,217.00	
Intangible Property		7,833,982.00	$41,730,199.00
Under the Capital-			

147 *Affidavit of H. C. Prince.*

Filed Jan. 20, 1922.

Affidavit of H. C. Prince.

STATE OF NORTH CAROLINA,
City of Wilmington:

Personally appeared before me, a Notary Public in and for the State of North Carolina, City of Wilmington, H. C. Prince, a resident of the aforesaid State and City, who, upon being duly sworn, deposes and says that:

(1) He is Comptroller of the Atlantic Coast Line Railroad Company and has occupied that position since July 1, 1902, (except from July, 1918 to February 29, 1920), and as such Comptroller he prescribed the accounting methods of said railroad company and directed and supervised its accounts in accordance with such methods. From July, 1918 to February 29, 1920, he was Federal Auditor for the United States Railroad Administration and as such directed the accounting for the operations of the Atlantic Coast Line Railroad Company's properties, which during that period were operated by the United States Railroad Administration.

(2) Briefly stated, the methods prescribed by him for apportioning results of operations to individual states were as follows:

(*a*) Operating Revenues.

One hundred per cent of freight and passenger revenues accruing to traffic having both origin and destination within a state (known as intrastate traffic), and one hundred per cent of all miscellaneous revenues earned within a state, such as switching, demurrage, car service, storage and other similar items, are allocated to the state in which they are earned.

Revenues from freight and passenger traffic, having either origin or destination within one state (known as interstate traffic), and revenues from freight and passenger traffic which have origin or destination within one state, but which pass in whole or in part through such state, known as interstate traffic, are allocated
148 to the states within which such traffic moves on basis of miles travelled by such traffic in each state.

No deductions, adjustments or allowances are made in such allocations for assembling, handling, loading, unloading and other terminal costs incident to the handling of trans-state traffic.

(*b*) Operating Expenses.

Maintenance and transportation cost and other operating expenses are allocated to each state in such proportion of the total operating

expenses for the system as the gross earnings in that state bear to the gross earnings for the system. No additions to, or adjustments of such costs so allocated to an individual state are made to equalize or adjust the expenses of assembling, handling, loading, unloading and other terminal costs incurred in receiving and discharging interstate traffic.

(3) Deponent states that he realizes that the net revenues produced for the State of North Carolina under the accounting method for allocating operating expenses to states above described are not equitable; that revenues allocated to each state, as revenues are allocated by Atlantic Coast Line Railroad Company's system of accounting, should be charged with appropriate proportions of the cost of asesmbling, terminal and handling charges incurred without the state on interstate traffic moved within the state; but that in the absence of any uniform method of apportioning operating expenses among the states, that is to say, any method prescribed by the Interstate Commerce Commission, or any State Commission, he adopted that method as being the fairest for each state that he could arrive at.

(4) Deponent further states that the apportionment of Operating Expenses among the states is made in order to comply with the orders of the State Railroad Commissions of the several states through which we operate and to be used for comparative and statistical purposes. The figures representing said apportionment on the
149 basis heretofore outlined are to be considered as reflecting approximated operating results (not actual) in the several states through which we operate. These figures are not intended to be used in calculating the Operating Income of any state to be capitalized for the purpose of arriving at the value of the Atlantic Coast Line Railroad property in any state through which it operates.

(5) Deponent further states that it is not the practice of the Atlantic Coast Line Railroad Company to make inter-divisional charges for costs incurred by the individual operating division in transporting company material for other operating divisions; consequently there is no additional charges made to operating expenses assigned to the State of North Carolina for transporting coal consumed by Atlantic Coast Line Railroad in that state, although such coal is obtained from the Alabama, Tennessee and Virginia coal fields. The Atlantc Coast Line Railroad Company uses no fuel coal mined within the State of North Carolina.

Deponent further states that the data reported in Atlantic Coast Line Railroad Company's quarterly reports to the Railroad Commis-on of the State of North Carolina, designated as "Operating Expenses" for other and additional reasons do not truly or accurately reflect the operating costs chargeable to revenues allocated to said state, such other additional reasons being:

Approximately three-fourths of the total operating revenues allocated to the State of North Carolina are derived from interstate business; and that according to a test of four months business made

in November, 1921 it was developed that of all freight traffic handled in North Carolina 54% consisted of trans-state traffic, having neither origin or destination within said state. Said trans-state traffic consists largely of such high class revenue producing commodities as fruits, vegetables, strawberries and other perishable products, which are handled in special equipment such as refrigerator and
150 ventilated cars, which cars are moved in fast freight service. That the cost of handling said perishable traffic, considering initial and terminal service incident thereto, is largely in excess of the average cost of handling all business on the Atlantic Coast Line; that in crediting North Carolina the straight mileage prorate of the revenue on such traffic without any deduction for assembling, terminal or handling charges in connection therewith, and in charging to North Carolina only a ratio of operating expenses applicable to the business of the entire line, results in allocating to North Carolina a net revenue in excess of that which is actually earned within said state.

The operating results allocated to the State of North Carolina and reported by the Atlantic Coast Line Railroad Company to the North Carolina Corporation Commission do not include any amounts representing proportions creditable or chargeable to North Carolina for the following items of income:

Equipment Rents,
Joint Facility Rents,
Uncollectible Railway Revenue,
United States Government Taxes.

To the extent noted, said reports over-state or under-state the net operating income of the State of North Carolina. Railway Operating Income as defined by Congress in the Transportation Act, approved February 28, 1920, contemplates the inclusion of debits and credits arising from such sources.

(6) Deponent further states that based on his intimate knowledge of the operations of the Atlantic Coast Line Railroad Company as a whole and in the several states in which the company transports traffic, that its operations are so interwoven and so inter-dependent that it is not possible to actually segregate the net operating income applicable to each of the states, and in the absence of any authoritative classification or formula for such division the fairest allocation possible would, in his judgment, be to capitalize the net in-
151 come of the entire Atlantic Coast Line Railroad Company at the market rate of interest and to allocate to the several states that portion of the total capitalization as the mileage operated in said state bears to the total mileage of the entire line.

The deponent further states that the tons of freight handled and the revenue earned thereon in the State of North Carolina for the first ten months of the year 1921 compared with the first ten months of the year 1919 were as follows:

	1919.		1921.	
	Tons.	Revenue.	Tons.	Revenue.
January	564,394	$995,869.72	379,388	$826,588.65
February	587,362	752,502.28	413,152	915,814.91
March	663,439	1,019,017.87	534,252	1,157,630.17
April	700,628	1,133,755.25	579,703	1,258,140.69
May	587,165	990,541.83	421,329	945,437.36
June	538,504	957,269.79	434,681	920,540.97
July	588,032	923,375.14	391,177	820,309.60
August	417,791	714,256.94	374,139	775,409.69
September	532,336	905,892.44	371,224	777,318.48
October	617,672	1,078,518.74	473,114	959,162.69 (Est.)
Totals	5,797,323	$9,471,000.00	4,372,159	$9,356,353.21

The deponent further states that the figures shown below truly represent the tons of the commodities named handled by the Atlantic Coast Line during the first ten months of the year 1921 as compared with the first ten months of the year 1919:

	1919.	1921.
Cotton	279,290	162,057
Leaf Tobacco	153,326	109,918
Fertilizer	1,463,449	702,274
Lumber	2,326,680	1,692,887

The Deponent further states that the net operating income of the Atlantic Coast Line Railroad Company, as defined in the Transportation Act, 1920, for the first ten months of the year 1921 are as follows:

Railway Operating Revenues	$55,129,287
Railway Operating Expeness	49,031,583
152 Net Revenue from Railway Operations	$6,097,704
Railway Tax Accruals	2,675,000
Uncollectible Railway Revenues	18,201
Railway Operating Income	$3,404,503
Equipment Rents	398,269
Joint Facility Rent	42,286
Net Railway Operating Income	$2,963,948

The deponent further states, that the statement annexed hereto marked Exhibit "A" purporting to show Operating Revenues, Expenses, Taxes, Net Operating Income and other statistics, of the Atlantic Coast Line Railroad for the years ended June 30, 1915, 1916 and 1917, and for the year ended August 31, 1921, truly reflect the operating results for the period stated as shown by the books of the Atlantic Coast Line Railroad Company, and as reported by him to the Interstate Commerce Commission. Also that the statement an-

EXHIBIT "A"

ATLANTIC COAST LINE RAILROAD COMPANY.

Office of Comptroller.

Statement of Operating Revenues, Expenses, Taxes, Net Operating Income and other statistics for the years ended June 30, 1915, 1916, and 1917, average for three year period and for year ended August 31, 1921.

		1915	1916	1917	Average one Year	August 31st, 1921
1	Average Miles Operated	4,669.36	4,702.90	4,761.99	4,718.08	4,887.68
	OPERATING REVENUES:					
2	Freight Revenue	$21,064,187.99	$23,292,589.43	$27,069,720.63	$23,808,832.68	$46,457,452.04
3	Passenger Revenue	7,853,539.42	8,271,629.18	10,019,389.82	8,714,836.14	18,695,061.24
4	Mail Revenue	654,439.94	652,635.15	813,963.17	707,006.09	1,602,497.50
5	Express Revenue	1,085,748.51	1,266,392.42	1,456,125.83	1,269,422.25	1,771,235.95
6	All Other Trans. Revenue	374,270.09	393,858.40	357,762.38	375,295.29	712,331.25
7	Other Revenues	504,288.93	568,020.75	689,301.98	587,203.89	1,530,749.54
8	Railway Operating Revenues	$31,536,474.88	$34,445,110.53	$40,406,263.81	$35,462,596.34	$70,859,377.52
	OPERATING EXPENSES:					
9	Maint. of Way and Structures	$4,572,650.63	$4,811,802.14	$4,747,299.64	$4,543,917.47	$10,346,823.52
10	Maint. of Equipment	5,438,461.12	5,580,774.71	6,663,369.40	5,894,201.74	15,501,802.97
11	Traffic	661,513.69	708,179.17	745,670.75	703,454.54	1,155,226.40
12	Transportation	11,891,110.13	11,216,198.62	13,555,170.16	12,020,826.30	33,613,631.17
13	Miscellaneous Operations	110,546.52	125,146.95	158,132.65	131,275.37	414,316.94
14	General	880,377.15	884,196.36	951,980.42	905,517.98	1,747,810.77
15	Transportation for Investment—Cr.	*50,502.06*	*24,289.58*	*30,864.08*	*35,218.57*	*8,124.63*
16	Railway Operating Expenses	$22,904,157.18	$22,797,008.37	$26,790,758.94	$24,163,974.83	$62,771,496.99
17	Operating Ratio	76.63	66.18	66.30	68.14	88.59
18	Net Revenue from Railway Operations	$8,632,317.70	$11,648,101.96	$13,615,444.87	$11,298,621.51	$8,087,880.53
19	Railway Tax Accruals	1,569,156.80	1,798,880.70	1,982,579.89	1,783,855.63	3,175,000.00
20	Uncollectible Railway Revenue	14,046.74	15,426.24	11,382.93	13,631.97	83,640.16
21	Railway Operating Income	$7,029,114.16	$9,833,805.02	$11,620,482.55	$9,496,133.91	$4,829,240.37
22	Equipment Rents—Net	438,076.96	537,372.86	963,024.25	644,491.36	*171,506.22*
23	Joint Facility Rents—Net	125,478.35	129,879.37	130,708.11	128,688.61	*77,315.62*
24	Net Railway Operating Income	$7,567,669.49	$10,506,057.25	$12,714,214.91	$10,269,313.88	$4,580,418.53
25	Percent return on Investment	4.22	5.73	6.81	5.61	2.17
26	Revenue tons Carried	10,507,751	12,291,713	14,539,731	12,446,398	13,806,402
27	Revenue tons Carried One Mile	1,750,912,250	2,146,812,435	2,779,166,105	2,225,630,263	2,714,579,975
28	Revenue Passengers Carried	7,608,261	7,850,294	8,234,508	7,896,054	7,898,759
29	Revenue Passengers Carried One Mile	358,379,412	377,347,732	457,541,310	397,756,151	545,006,290

Wilmington, N. C., December 21st, 1921-s.

ITALICS SHOW DEFICIT

ATLANTIC COAST LINE RAILROAD COMPANY.

OPERATING REVENUES AND EXPENSES, TAXES, NET RAILWAY OPERATING INCOME AND OTHER STATISTICS BY MONTHS, FOR YEAR ENDED AUGUST 31st, 1921.

	September 1920	October 1920	November 1920	December 1920	January 1921	February 1921	March 1921	April 1921	May 1921	June 1921	July 1921	August 1921
Average Miles Operated	4,667.73	4,666.75	4,666.65	4,667.61	4,669.32	4,669.32	4,668.28	4,667.21	4,666.69	4,667.43	4,667.19	4,666.84
OPERATING REVENUES:												
Freight Revenue	$5,061,620.07	$4,445,777.75	$4,027,245.06	$3,000,698.11	$3,071,752.56	$3,894,305.61	$4,770,249.77	$4,464,972.12	$3,706,686.57	$3,405,950.67	$2,949,487.14	$2,662,456.64
Passenger Revenue	1,475,897.82	1,435,860.20	1,361,844.20	2,395,369.41	2,121,966.17	1,991,932.79	1,888,806.24	1,518,409.02	1,190,470.40	1,098,729.71	1,096,784.56	1,062,306.51
Mail Revenue	136,094.08	273,406.26	116,439.96	251,586.68	117,614.00	97,689.79	115,986.89	116,057.50	115,893.50	122,687.94	117,791.81	111,163.58
Express Revenue	114,508.97	143,138.52	161,622.42	137,159.05	125,174.36	56,031.29	201,229.19	155,136.42	194,568.63	184,591.61	115,149.98	122,323.56
All Other Transportation Revenue	49,661.22	68,007.92	68,080.22	209,205.23	40,758.75	42,747.35	49,254.21	47,009.47	36,016.16	34,279.36	30,675.11	30,496.15
Other Revenues	118,868.45	130,821.90	120,718.34	178,586.97	173,976.21	133,474.01	141,648.41	137,715.27	105,315.09	91,943.62	91,015.07	106,807.65
Total Railway Operating Revenues	$6,976,173.62	$6,496,994.75	$6,135,950.29	$6,087,585.05	$6,451,142.05	$6,321,950.63	$7,112,880.13	$6,439,299.80	$5,350,950.29	$4,938,182.91	$4,402,903.69	$4,175,444.11
OPERATING EXPENSES:												
Maintenance of Way & Structures	$ 962,989.06	$ 908,430.11	$1,149,989.83	$ 869,425.73	$ 913,258.91	$ 928,975.09	$ 963,586.96	$ 783,997.61	$ 803,077.28	$ 762,044.19	$ 732,874.79	$ 723,663.38
Maintenance of Equipment Expense	1,184,545.19	1,474,819.22	1,585,072.01	1,472,585.65	1,346,561.42	1,206,911.56	1,447,904.05	1,228,167.61	1,234,466.43	1,041,542.43	1,138,949.48	1,191,986.06
Traffic	83,864.80	97,696.32	109,362.96	109,311.00	114,006.96	107,237.28	92,528.37	96,804.72	96,404.63	82,699.25	93,198.41	84,065.83
Transportation	2,913,228.67	2,798,943.03	3,167,082.99	3,217,782.10	3,198,496.97	2,927,561.06	3,022,347.05	2,937,397.83	2,672,104.52	2,502,048.53	2,283,880.62	2,071,880.09
Miscellaneous Operations	29,009.05	31,294.52	27,575.22	44,190.10	47,519.90	47,083.26	54,803.62	35,294.56	23,967.21	20,896.99	22,310.26	18,841.94
General	144,618.75	141,944.63	160,618.33	153,186.20	147,489.17	139,948.13	154,782.26	152,972.50	149,222.63	140,527.73	138,294.01	134,361.44
Transportation for Investment—Cr.	*933.47*	*193.20*	*182.36*	*292.37*	*544.85*	*1,230.48*	*285.10*	*535.50*	*1,497.35*	*45.96*	*2,263.45*	*115.59*
Total Railway Operating Expenses	$5,318,622.59	$5,459,184.63	$6,156,460.48	$5,966,406.61	$5,765,908.51	$5,356,695.89	$5,735,566.62	$5,232,159.33	$4,977,835.45	$4,529,713.46	$4,397,252.12	$4,224,705.63
Operating Ratio Percent	106.84	98.85	100.37	72.72	89.39	82.68	79.23	81.25	93.03	91.72	99.87	101.2
Net Revenue from Railway Operations	*$ 340,454.64*	$1,047,760.12	*$ 22,500.19*	$2,201,186.64	$684,233.54	$1,095,254.94	$1,377,313.51	$1,207,140.47	$373,114.84	$408,469.43	$ 5,651.57	*$ 49,259.52*
Railway Tax Accruals	300,000.00	275,000.00	250,000.00	300,000.00	250,000.00	250,000.00	275,000.00	275,000.00	275,000.00	275,000.00	275,000.00	275,000.00
Uncollectible Railway Revenues	894.94	2,563.81	7,373.17	57,661.95	1,175.42	1,433.28	2,256.47	1,372.52	1,328.24	2,633.61	2,664.32	2,921.32
Railway Operating Income	*$ 640,719.52*	$770,206.31	*$ 279,872.36*	$1,943,524.69	*$433,058.12*	*$843,821.56*	$1,100,057.04	$930,767.95	$ 96,786.60	$130,835.82	*$ 272,012.75*	*$ 327,180.85*
Hire of Equipment—Net	114,189.52	127,232.03	111,484.47	52,061.06	*80,713.59*	*160,702.48*	*167,375.99*	*169,606.41*	*158,595.05*	*10,219.23*	39,347.65	121,691.80
Joint Facility Rents—Net	30,460.52	*13,191.02*	*15,736.21*	*26,391.53*	*11,554.12*	*10,250.44*	10,186.78	2,410.63	*5,982.19*	*44,810.47*	17,290.87	*9,648.34*
Net Railway Operating Income	*$ 496,070.54*	$894,947.32	*$184,124.10*	$1,969,184.22	$340,790.41	$672,868.64	$1,042,817.63	$763,572.17	*$ 68,090.64*	$75,806.14	*$ 215,425.53*	*$215,137.19*
Percent return on Investment	Loss	5.23	Loss	11.44	1.92	3.79	5.86	4.29	Loss	0.43	Loss	Loss
Revenue Tons Carried	1,150,327	1,489,779	1,226,024	1,961,488	1,006,713	1,085,784	1,319,864	1,170,931	1,009,059	1,011,726	943,985	940,992
Revenue Tons Carried One Mile	208,704,179	239,694,180	243,294,950	304,185,130	214,253,645	219,035,225	258,172,280	237,521,930	208,127,755	196,198,445	186,930,770	180,471,395
Revenue Passengers Carried	849,674	824,913	775,690	884,829	742,184	639,384	680,521	524,370	517,794	467,350	580,219	582,721
Revenue Passengers Carried One Mile	47,259,696	43,870,044	45,299,251	66,541,769	62,363,718	58,812,801	58,436,209	40,450,365	32,726,464	31,733,320	32,214,555	31,726,118

Wilmington, N. C., December 22nd, 1921-s.

ITALICS SHOW DEFICIT

pa

nexed hereto marked Exhibit "B" purporting to show Operating Revenues, Expenses, Taxes, Net Operating Income, and other statistics by months for the year ended August 31, 1921, truly reflect the operating results for the months named as shown by the books of the Atlantic Coast Line Railroad Company, and as reported by him to the Interstate Commerce Commission.

H. C. PRINCE.

Subscribed and sworn to before me,
This 22nd, day of December, 1921.
[SEAL.]

BERTRAM QUELCH,
Notary Public.

My commission expires May 31, 1922.

(Here follow tables marked pages 153 and 154.)

155 *Affidavit of P. R. Albright.*

Filed Jan. 20, 1922.

Affidavit of P. R. Albright.

STATE OF NORTH CAROLINA,
County of New Hanover:

P. R. Albright, being duly sworn, deposes and says:

That he is General Manager of Atlantic Coast Line Railroad Company, complainant in the above entitled action, and has been General Manager of that railroad since November 16, 1915, with the exception of the time during which the roads were under Government control, and he was then General Manager of the said railroad for the Director General of Railroads of the United States Railroad Administration; that prior to said November 16, 1915, he was Assistant General Manager and Assistant to the General Manager for many years.

During the period of Federal control, by reason of the inability of the railroads to secure either a full quota of men or necessary amount of materials, as well as by reason of the fact that a tremendous volume of business was handled incident to the conduct of the *the* War, the equipment, both locomotives and cars, deteriorated to a greater extent than would normally have been the case, and greater usage of roadbed and structures likewise caused an abnormal deterioration in the maintenance of way and structures, which deterioration was further brought about by inability to secure men and materials to make repairs, even when funds were available.

Subsequent to the period of Federal control, an effort was made to overcome the deferred maintena-ce of roadway, structures, and equipment, but for many months there was continued shortage of men and materials. Likewise, there was a very heavy increase in the accumulation of freight cars, requiring maintenance, which were returned to this Company from all sections of the United States where they had been scattered during Federal control, and
156 were in a most dilapidated condition upon reaching the rails of the home company. The extent of repairs to nearly all such cars was so great in many instances that it practically amounted to rebuilding them.

This affiant further says that after the return of the railroad by the United States Government to this Company it had not sufficient funds and did not earn sufficient funds to make the necessary repairs to its locomotives and cars, and to its ways and structures, so that as of October 31, 1921, there were then remaining on hand locomotives, passenger and freight cars, to repair which would cost $2,461,786. In addition to this amount and for the same causes, there now remains the sum of $3,290,000, which it will be necessary to expend in maintenance of way and structures in order to bring the said property back to its normal condition, making a total of $5,-

751,786, all of which amount must, necessarily, have to be made up out of earnings, and all of this maintenance has been deferred on account of lack of earnings and cannot be done until the earnings are sufficiently great to provide the funds therefor.

Affiant further says that the cost of building and maintaining the line of railroad of this Company in the states of Virginia and Alabama is much greater than the cost of its lines in North Carolina.

P. R. ALBRIGHT.

Sworn and subscribed to before me,
This 23rd day of December, 1921.
[SEAL.]

P. L. EASTERLING,
Notary Public.

My commission expires January 11, 1923.

157 *Affidavit of H. L. Borden.*

Filed Jan. 20, 1922.

Affidavit of H. L. Borden.

STATE OF NEW YORK,
City of New York:

H. L. Borden, being duly sworn, deposes and says that he is Vice-President and Secretary of the Atlantic Coast Line Railroad Company, a corporation of the State of Virginia, and has been such Vice-President since November 20, 1917, and has been such Secretary since November 17, 1902; that he is familiar with, and has kept familiar with the securities of the Atlantic Coast Line Railroad Company, generally, for twenty years or more; that he has read the words and figures on pages forty-seven, forty-eight and forty-nine of the Bill of Complaint of the Atlantic Coast Line Railroad Company filed in this cause; that the tables shown on said pages, showing the market prices of the stocks and bonds of the Atlantic Coast Line Railroad Company were compiled under his direction; that said figures on page forty-seven were, to the best of his knowledge and belief, taken from the "Commercial and Financial Chronicle," a financial paper published in the City of New York, which does now and has for many years made a business of compiling and publishing the quotations of stocks and bonds on the New York Stock Exchange and other markets, and from other financial sources; that the said "Commercial and Financial Chronicle" is a publication circulating throughout the financial districts of the United States, covering financial reports and reports of the market conditions of stocks and bonds, and its quotations are accepted throughout the financial markets and districts as being correct and accurate reports of market values, and that the statements on page forty-seven so compiled under the direction of this affiant are true and correct statements as taken from the said "Commercial and Financial Chronicle" and the figures referred to as "average prices" on pages forty-eight and forty-nine are based on such reported market values.

H. L. BORDEN.

Sworn and subscribed to before me,
This 21st day of December, 1921.
[SEAL.]

ELLA COLEMAN,
Notary Public, No. 126, N. Y. Co.

My commission expires March 30, 1922.

158 *Affidavit of S. R. Morton.*

Filed Jan. 20th, 1922.

Affidavit of S. R. Morton.

STATE OF NEW YORK,
City of New York:

S. R. Morton, being duly sworn, deposes and says that he is employed as a clerk in the office of H. L. Borden, Vice-President and Secretary of the Atlantic Coast Line Railroad Company, a corporation of the State of Virginia, and has been so employed since September 4, 1906; that he has read the words and figures on pages forty-seven, forty-eight and forty-nine of the Bill of Complaint of the Atlantic Coast Line Railroad Company filed in this cause; that he compiled the tables shown on said page forty-seven showing the market prices of the stocks and bonds of the Atlantic Coast Line Railroad Company and that said figures were by him taken from the "Commercial and Financial Chronicle," a financial paper published in the City of New York, and that the statements are true and correct as taken from the said "Commercial and Financial Chronicle."

S. R. MORTON.

Sworn and subscribed to before me,
This 21st day of December, 1921.
[SEAL.]

ELLA COLEMAN,
Notary Public, No. 126, N. Y. Co.

My commission expires March 30, 1922.

159 *Affidavit of R. E. Johnson.*

Filed Jan. 20, 1922.

STATE OF NORTH CAROLINA,
County of Gaston:

R. E. Johnson, being duly sworn, says:
That he is a citizen of Gaston County, North Carolina, and has been such for a number of years; that he is engaged in the business of selling agent and merchandise distributor and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) R. E. JOHNSON.

Subscribed and sworn to before me, this the 5th day of October, 1921.

(Signed) EDNA J. AHMAND,
Notary Public, Gaston County, North Carolina.

My Commission expires September 3, 1922.

Like affidavits as to the same rate of interest were made by the following:

W. C. Idol, Cashier, Wachovia Bank & Trust Company, High Point, N. C.,

V. A. J. Idol, Cashier, Commercial National Bank, High Point, N. C.,

Frank Wineskie, Manufacturer, High Point, N. C.,

Guy E. Wells, Automobile Dealer, High Point, N. C.,

J. E. Kirkman, Furniture Manufacturer, High Point, N. C.,

Harry Raymond, Manufacturer of Veneers, High Point, N. C.,

W. H. Slave, Hosiery Manufacturer, High Point, N. C.,

R. T. Amos, Hosiery Manufacturer, High Point, N. C.,

Wallace B. Davis, President, Central Bank & Trust Company, Asheville, N. C.,

S. M. Hanes, Secretary, Bankers Trust and Title Insurance Company, Asheville, N. C.,

R. H. Edwards, President, Farmers Loan & Trust Company, Goldsboro, N. C.,

Geo. D. Bizzell, Chairman, County Board of Commissioners of Wayo County,

Fred R. Mintz, co-partner of Williamson Real Estate Company, Mount Olive, N. C., and Representative in the General Assembly of North Carolina from Wayne County.

160

Affidavit of Raymond C. Parker.

Filed Jan. 20, 1922.

STATE OF NORTH CAROLINA,
County of Forsyth:

Affiant, Raymond C. Parker, says that he is a practicing attorney at law, and has been a resident of Forsyth County for 6 years; that he has made an examination of all deeds recorded in Forsyth County as appears in schedule hereto attached from January 1, 1921, to

June 30, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000), and also of the assessed value of the real estate embraced in said deeds for the year 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the considerations shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: From the amount of Federal Tax imposed and entered on the record, viz.: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or factional part thereof in excess of $500, 50 cents, and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $1,024,446.57, and that the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $660,229.00. The statement is attached hereto, initialed and numbered — to —.

RAYMOND C. PARKER,
Affiant.

Subscribed and sworn to before me this 14th day of January, 1922.

My commission expires Oct. 5, 1922.

[SEAL.] FRANCES ADAIR JONES,
Notary Public.

(Here follows table marked pages 161-166, inc.)

rp
GCL

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Jan.	3	N.S.Myers	D.Coy Joyce	1,500.00	600.00
Jan.	3	Emma Tesh	E.O.Hunter	1,550.00	800.00
Jan.	1	Bowman Gray	David White	72,500.00	54000.00
Jan.	4	A.G.Logan	J.S.Loyd	5,000.00	3500.00
Jan.	5	G.W.Flynt,Sheriff	Walter Thompson et al	1,300.00	Church
Jan.	4	H.B.Stimson	Lillie B. Vestal	3,000.00	2400.00
Jan.	7	Jack Whitlock	R.W.Craft	1,000.00	850.00
Jan.	5	J.A.Stith & Wife	J.S.Mock	3,500.00	4500.00
Jan.	14	Clarance A.Warner	Bertha L.Fulton	1,500.00	1250.00
Jan.	19	J.N.Davis et als	W.C.Crews	6,000.00	1466.00
Jan.	1	A.E.Holton	E.L.James	5,821.20	2874.00
Jan.	19	W.G.Jerome	W.Ray Johnson	4,000.00	600.00
Jan.	19	W.R.Lauten	R.S.Wear	5,000.00	3300.00
Jan.	1	R.K. Mendenhall	H.J.Tucker	2,000.00	3500.00
Jan.	24	F.O.Jones	Grover McGee	5,500.00	720.00
Jan.	24	T.J.Gourly	F.O.Jones	1,500.00	700.00
Jan.	24	Fred Smith	Martha Conrad	1,000.00	300.00
Jan.	18	E.C.Ward	W.R.Ward	3,000.00	2100.00
Jan.	12	A.C.Dillon et als	T.S.Wood	2,400..00	2480.00
Jan.	20	Sarah F.Smith et al	Lizzie Crews	1,440.00	615.00
Jan.	24	Jas.A.Gray et als	C.G.Hill et als	2,000.00	1400.00
Jan.	18	G.C.Jackson & Wife	Mrs.Lollie C.Flake	2,000.00	750.00
Jan.	26	R.R.Jones & Wife	Milton Cash	19,000.00	10000.00
Jan.	25	Hugh C.Pollard	John L. Wimbish	30,000.00	25600.00
Jan.	28	B.D.Smith	City of Winston-Salem	3,000.00	City
Jan.	20	Luther H. Smith et als	City of Winston-Salem	5,970.00	City
Jan.	26	George Lee Cass	Martha G. Carter	3,000.00	1500.00
Jan.	26	Jas.G.Hanes	Annie M.Butler	1,600.00	1000.00
Jan.	14	T.W.Griffith	W.N.Reynolds	25,500.00	13265.00
Jan.	25	W.P.Hill,Jr.	F.B.Crowther	1.650.00	1500.00
Jan.	28	I.C.Sprinkle	W.T.Brown	2,450.00	1200.00
Jan.	31	Merchants B.&Tr.Co.	Ira Rhoads	3,700.00	2500.00
Jan.	1	E.S.Porter & Wife	W.M.Himmer	2,500.00	1700.00
Feb.	1	E.B.Shouse & Wife	Nellie H. Craver	3,000.00	2500.00
Jan.	31	R.L.Davis et al	C.D.Montgomery	1,500.00	700.00
Jan.	31	D.S.Reid	W.J.Pinkston	7,500.00	3600.00
Feb.	2	C.H.Smith et al	J.F.Myers	2,000.00	1000.00
Feb.	1	Minnie E. Fitzgerald	E.R.Linville	1,000.00	750.00
Jan.	29	John Scheidt et al	J.T.Boyer	4,500.00	2500.00
Jan.	15	Lewis E.Spaugh et al	Henry A. Fishell	8,000.00	5485.00
Feb.	5	William R. Robins et al	Frank A. Woodley	5,000.00	4000.00
Feb.	5	Annie B. Gleen et al	W.L.Mooney	8,000.00	4000.00
Feb.	2	W.O.Crotts & Ella	W.B.Seagraves	2,000.00	850.00
Feb.	1	C.F.Henderson et al	J.Allen Marshall	2,000.00	1225.00
Jan.	8	W.E.Nissen et al	J.A.Evans	12,500.00	1800.00
Feb.	3	A.B.Somerville et al	F.J.Thomas	3,000.00	2500.00
Feb.	1	W.H.Speas et al	William Thomas Boger	2,000.00	1540.00
Feb.	4	W.H.Speas	Cora L. Speas	1,000.00	1505.00
Jan.	21	Dorcas A.Lott et al	H.Stokes Lott,Jr.	5,000.00	6075.00
Feb.	1	B.F.Briggs & Mary	H.A.Cunningham	2,300.00	2000.00
Jan.	22	Miriam Crossett	Hattie D.Futrell	3,400.00	800.00
Feb.	7	Geo.D.Hodgin	Russell G.Holder	1,000.00	300.00
Jan.	28	J.C.Kruger	Myrtle Freeland	6,000.00	3200.00
Jan.	31	R.F.Tilley & Lula	Pilot Real Estate Co.	3,500.00	300.00

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Feb.	9	C.E.Ebert et al	W.R.Lauten	2,150.00	3200.00
Feb.	8	R.Thurmond Chatham etal	Laura R.Medearis	2,500.00	1250.00
Feb.	5	W.W.Foy & Bessie L.	Matilda Smith	1,000.00	1000.00
Feb.	7	Cora Daye & Chas	U.A.Bost	2,500.00	1500.00
Jan.	26	M.C.Venable et al	R.C.Perry	1,500.00	600.00
Jan.	14	H.A.Pfohl et al	G.M.Bryan	3,000.00	2600.00
Feb.	8	M.G.Tucker et al	R.W.Ebert	4,000.00	2800.00
Feb.	6	J.W.Richardson et al	C.S.Richardson	3,000.00	2250.00
Feb.	15	J.A.Templeton et al	Wesley M.McCann	2,000.00	2000.00
Jan.	29	C.W.Jones et al	C.M.Phelps	3,300.00	2000.00
Feb.	14	B.F.Foy & Belle	Henry V. Brown	1,200.00	765.00
Feb.	14	E.Fuller Conrad	E.J.Carson	3,250.00	2500.00
Feb.	14	Dr. E.L.Cox	W.R.Thomas	3,000.00	1800.00
Feb.	4	John W.Miller	Wesley Hege	2,331.70	1500.00
Feb.	2	Katherine D.Roddey etal	Bob Kiriakides	3,500.00	2000.00
Feb.	15	Jim Gill & Bessie	Smithdeal Realty Co.	1,000.00	1000.00
Jan.	27	J.C.Graham Jr. et al	B.M.Cahill,Jr.	1,000.00	550.00
Jan.	22	A.C.Cranfill et al	H.T.Clayton	2,250.00	1850.00
Feb.	15	Hugh M.Hinshaw	Guy F.Hinshaw	1,000.00	750.00
Feb.	11	J.M.Hodges	Nance Leonard	1,200.00	1000.00
June	10	The E.Winston Dev.Co.	E.C.Lowder	1,000.00	400.00
June	6	Realty Exchange	City of Winston-Salem	3,750.00	City
Mar.	31	Pilot Real Estate Co.	C.S.Roddick	2,500.00	1450.00
June	3	Poindexter,M.W. Co.	Ralph Long et al	86,000.00	20200.00
June	16	Fairview Supply Co.	G.W.Dailey	1,000.00	700.00
June	29	Central Terrace Co.	Geo.W.Brady	1,200.00	200.00
June	7	Poindexter M.W.Co.	Paul O. Pegram	5,000.00	3750.00
June	21	Standard Improv. Co.	Henry L.Islar	5,500.00	933.00
Mar.	9	Central Terrace Co.	Mary Miller	1,000.00	250.00
Feb.	22	Cobb Noble Co.	E.F.LaGrande	3,500.00	2600.00
June	7	Poindexter M.W. Co.	J.H.Bowman	3,000.00	4450.00
Mar.	5	Winston Realty Co.	Daisy E.Grubbs	1,500.00	600.00
June	7	Highland Dev. Co.	T.B. Vick	1,000.00	400.00
Feb.	1	Standard Improv. Co.	J.F.Smithdeal	3,250.00	2250.00
Apr.	6	W.J.Dillon & Mattie	Southside Realty Co.	1,350.00	1000.00
May	25	C.H.Brown et al	W.T.Brown	3,200.00	1200.00
June	1	G.W.Linville et al	C.C.Musten	3,800.00	3460.00
May	27	S.Carter Williams etal	Southern Loan & D.Co.	1,500.00	1400.00
May	26	C.H.Jones	J.C.Stewart, Agt.	1,000.00	700.00
May	24	James Gill & Bessie	A.Shevick	1,500.00	1000.00
June	2	D.S.Reid	Allie Gooch Reid	5,000.00	14000.00
June	3	John F.Reynolds et al	J.M.Brown	5,000.00	8000.00
June.	2	John Grace & Gladys	Southern Loan & D. Co.	3,500.00	3250.00
May	13	S.C.Williams Trustee	Dixie Bond & Mortg Co.	1,300.00	1300.00
Mar.	5	Nancy Maynard et al	S.M.Arnold	1,000.00	1800.00
May	17	J.B.Ashby & Wife	R.D.Austin	1,000.00	600.00
May	23	M.D.Stockton et al	J.W.Ingle	8,500.00	4000.00
Apr.	8	W.F.Gordon & Fannie	T.J.Huffman	2,000.00	1780.00
June	4	G.F.Jenkins et al	Sarah L.Kallam	1,000.00	1800.00
June	4	West End Devel. Co.	J.J.Currin & Wife	3,000.50	1980.00
May	31	J.R.Clayton et al	N.O.Covington	2,500.00	650.00
June	2	Chas. W. Phelps et al	N.M.Linville et als	2,000.00	2000.00
June	4	Mary Sue Etheridge	W.F.Roesel	3,000.00	2500.00
May	27	J.M.King et al	R.M.Ray	9,000.00	2600.00
May	27	R.M.Ray	Lina B. Poe	1,000.00	2600.00

AC2

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
June	3	J.A.McDowell	Carey P.Thornbro	1,000.00	900.00
May	7	T.G.Neely & Mamie	City of Winston-Salem	1,500.00	950.00
June	7	E.C.Willey et al	Nancy Bowers	1,000.00	700.00
June	6	T.F.Carter	Eliza Humphries	2,250.00	1750.00
May	25	B.C.Tavis et al	T.G.Neely	2,000.00	1150.00
May	20	Wb. & T.Co.Ex.	John C.Joyce	4,725.00	1900.00
June	1	T.D.Newton et al	Jonas B.Bailey	1,000.00	750.00
June	6	Frances P.Johnson etals	S.F.Penry	1,000.00	750.00
June	2	W. F. Miller	R. J. Parrish	1,800.00	800.00
Feb.	28	J. L. Wimbish	Mackie	4,000100	3250.00
March	15	Robert C. Spaugh	Lawrence D. Long	1,000.00	400.00
June	6	J. H. Whicker	R. K. Scharborough	1,600.00	1000.00
May	7	Chas. Walser	City of Winston-Salem	6,000.00	2750.00
June	11	I. L. Sisk	H. A. Beckerdite	2,000.00	1500.00
June	7	George Crews	City of Winston-Salem	6,000.00	4000.00
May	7	E. W. Smith	City of Winston-Salem	6,000.00	1800.00
May	7	William Donell	City of Winston-Salem	3800.00	1500.00
March	19	J. C. Graham, Jr.	Chas. W. Grishaw	1,000.00	450.00
June	10	Chas. W. Grishaw	Katie L. Cahill	1,025.00	450.00
June	8	John H. Dyer & Bertha	Lewella M. Shore	4,000.00	3250.00
Apr.	1	Fannie T. Dycus	T. W. Beaman	3,000.00	2700.00
Apr.	9	W. H. Clinard	Joe H. Russell	1,500.00	1300.00
Apr.	9	W. H. Clinard	Oscar I. Smith	3,500.00	1350.00
Apr.	9	P. C. Clinard	M. P. Knouse	1,500.00	1300.00
Apr.	9	P. C. Clinard	J. C. Faw	1,500.00	1300.00
June	14	K. E. Shore	M. A. Haney	1,000.00	600.00
June	13	G. L. Johnson	G. H. Little	1,000.00	800.00
June	13	A. B. Elam	W. H. Lewis	2,500.00	1000.00
May	28	M. A. Walker	Mary Orr Wright	8,000.00	5500.00
Mch.	31	C. S. Roddick	Pilot Real Estate Co.	1,000.00	1200.00
June	11	J. P. Jarrett	Carifolos G. Morris	3,000.00	2500.00
June	18	L. F. Owen	Gill Hill	3,598.10	2455.00
June	18	C. M. Thomas	W. H. McMahan	3,000.00	1500.00
June	18	E. L. Kiser	J. W. Styers	3,500.00	1000.00
June	21	Wachovia Bank & TrustCo.	Liberty Baking Corp.	4,500.00	2143.00
June	3	C. J. Helsabeck	D. M. Wright	1,800.00	1000.00
June	18	P. A. Fountaine	Joe Tilley	3,240.00	3000.00
June	17	H. L. Walser	Poindexter Montague Gh.	2,000.00	1600.00
June	20	Ovid Jones	Luther S. David	3,950.00	2200.00
June	21-	J. A. Tise	Ben V. Matthews	1,800.00	1200.00
June	17	Wachovia B. & Trust Co.	H. L. Walser	2,000.00	300.00
June	15	J. H. Burns	J. S. Lloyd	1,500.00	1000.00
June	3	A. Shevick	Annie Shevick	1,000.00	1000.00
June	21	F. H. Rawls	J. C. Graham, Jr.	1,500.00	500.00
June	22	H. D. Shutt	Bill Paulos	3,500.00	1500.00
May	31	J. F. Self	J. Neal Davis	4,300.00	3180.00
June	22	Amanda C. Brewer	Mrs. Etta R. Snyder	3,500.00	3000.00
June	25	J. C. White	J. A. McDowell	1,000.00	700.00
June	11	Farmers B. & Trust Co.	Rosa H. Kapp	1,170.00	1150.00

rp4.

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
June	22	A. L. Green	Ford	1,200.00	900.00
June	24	J. B. McCreary	W. G. Cranford	1,500.00	120.00
June	10	Virginia Wright	H. F. Hedrick	2,500.00	3100.00
Feb.	8	L. M. Porter	Jeter Duckworth	3,000.00	1400.00
June	23	H. F. Hedrick	J. A. McDowell	1,500.00	400.00
Apr.	21	J. P. Lacy-	W. H. C. Franks	1,760.00	1300.00
June	16	Fred Sheetz	W. B. Carlton	1,500.00	750.00
June	24	W. T. Hill	Dr. A. H. Ray	1,400.00	1925.00
June	25	T. B. Transou, Littie	J. H. Newberry	2,500.00	1425.00
June	27	J. H. Newberry	T. B. Transou	7,500.00	1500.00
June	28	W. H. C. Franks	G. B. Craft	1,000.00	600.00
June	28	M. A. Haney	W. B. & Trust Co.	3,800.00	2000.00
June	27	P. S. Carter	The Autoserve Co.	1,500.00	1250.00
June	29	Marlie Gant	W. H. Mock	1,500.00	600.00
Feb.	24	Jennette Lambeth	May J. Jones	2,000.00	1100.00
June	29	H. M. Brown	Arthur Clodfelter	1,638.00	605.00
June	10	S. C. Ripple	Home Builders Co.	1,000.00	1200.00
June	30	Frank W. Hanes	John H. Folger	26,000.00	24796.00
June	16	A. A. Slawter	S. W. Garner	1,000.00	60.00
March	31	Rosa Carmichael Jones	Mrs. E. M. Leight	1500.00	1500.00
May	6	C. L. Bagby	D. G. Kelley	3,000.00	2200.00
June	25	Carrie B. Crooh	J. Robah Thomas	1,500.00	700.00
May	21	J. M. Tyson	R. M. Hanes	1,000.00	3200.00
Apr.	28	Dempsey Smith	Bertha Stuart	2,000.00	3000.00
June	18	J. N. Davis	Dora Orleans	1,000.00	2750.00
June	17	Dora Orleans	Home Builders Co.	1,000.00	2900.00
June	24	S. C. Riffle	Fred J. Andrews	1,000.00	1200.00
June	17	H. R. Jordan	J. N. Davis, et al.	1,500.00	1000.00
June	2	C. M. Thomas	John F. Bidden	1,900.00	500.00
June	28	C. M. Thomas	J. R. Thomas	4,000.00	1500.00
Apr.	28	W. B. & Trust Co.	Nathan Berlin	2,000.00	1000.00
May	23	J. O. White	Sadie E. Fisher	1,500.00	500.00
June	30	Agnes R. Jones	T. M. Lathan	3,500.00	1425.00
June	2	E. T. Pinkston	Frank B. Cash	1,500.00	1500.00
June	27	J. G. Jones	L. W. Edwards	2,300.00	2000.00
Apr.	8	J. A. Gordy	Amanda J. Doub	2,200.00	800.00
June	6	D. L. Donnell	H. J. Flynt	2,510.00	400.00
Apr.	23	J. L. Swaim	Walter Nifong	2,500.00	1700.00
Feb.	15	Jeter Duckworth	L. M. Porter	8,000.00	3000.00
May		Ida F. Thompson	R. P. Penry	2,900.00	2600.00
Jan.	5	L. R. Malone	H. M. Reid	2,500.00	1850.00
Apr.	19	J. C. Williamson	John Pitts	2,500.00	650.00
Feb.	8	S. C. Riffle	Julia C. Knox	1,000.00	600.00
June	13	H. Jacobson	M. Hersh	1,500.00	2187.00
June	1	Chas. L. Barclay	Gus. N. Polites	4,710.00	2800.00
Apr.	6	R. J. Bowen, et al.	L. C. Oakley	1,000.00	400.00
Jan.	1	Jas. A. Hutchins	Nell W. Porter	2,000.00	900.00
Apr.	1	J. P. Ashby	J. R. Irby	1,000.00	600.00
Jan		P. H. Hanes, Jr.	L. C. Oakley	2,500.00	2000.00

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Jan.	13	Smithdeal Realty Ins.Co.	Ray M. Tesh	4,800.00	2500.00
Jan.	1	Southern DevelopmentCo	Mrs. Minda D. Hankins	1,250.00	1000.00
Jan.	24	Pilot Real Estate Co.	J. W. LaLonde	4,750.00	4000.00
Jan.	21	Poindexter Montague Co	H. F. Hoote, Jr	5,000.00	4000.00
Feb.	7	Highland Dev. Co.	Jannie Mundy	1,500.00	800.00
Feb.	3	Highland Dev. Co.	Phebe T. Johnson	1,000.00	400.00
Feb.	7	Southern Realty Co.	Lillian D. Bulla	1,500.00	1000.00
Feb.	22	The Banner Inv. Co.	J. B. Courtney	2,500.00	1500.00
Feb.	5	The Ardmore Co.	C. C. Ausband	1,500.00	900.00
Feb.	26	County Board of Educat	Sarah E. Lindsay	1,330.00	1400.00
March	7	Smithdeal Realty Ins.Co.	Journal Publishing Co.	1,000.00	600.00
March	7	S. J. Bennett, et al	Dr. C. W. Mimms	1,250.00	1300.00
March	2	The Motor Co.	A. B. Elam	1,000.00	400.00
March	16	Highland Dev. Co.	Annie Lula Dobson	2,000.00	600.00
March	16	Fred H. Foote	Minnie Strange	2,800.00	4000.00
March	21	Central Terrace Co.	H. F. Anderson	1,000.00	450.00
March	22	Cobb Glass Co.	J. H. Clinard	2,000.00	1700.00
March	18	Pilot Real Estate Co.	Nell W. Porter	2,500.00	1250.00
March	31	Standard Improvement Co	William Breach	1,500.00	1100.00
Feb.	4	Smithdeal R. & Ins. Co.	Sentinel Pub. Co.	1600.00	1600.00
Apr.	4	The Motor Co.	S. A. Fields	1,500.00	900.00
Apr.	12	Forsyth Roller Mills	A. L. Butner	2,200.00	7325.00
Apr.	8	The Banner Inv. Co.	W. P. Hill	2,000.00	2350.00
Apr.	5	Virginia Carolina LandCo	C. T. Hauser	7,500.00	5000.00
Feb.	1	Poindexter-Montague Co.	W. M. Stamper	6,000.00	5700.00
Apr.	5	Poindexter-Montague Co.	T. M. Hamby	5,000.00	3500.00
March	17	Smithdeal Realty Ins.Co	Orinoca Supply Co.	2,000.00	1185.00
Apr.	26	Ogburn Realty Co.	H. G. Smith	6,000.00	5000.00
Apr.	28	Highland Dev. Co.	D. H. Blair	1,500.00	800.00
Apr.	14	Ham Estate, Inc.	John B. McRay	22,500.00	10600.00
Apr.	14	Ham Est., Inc.	Rominger Furniture Co.	21,500.00	12500.00
May	5	W. W. Walsh & Co.	Luther Kellurn	1,639.00	900.00
May	7	Home Real Estate Co.	D. L. Donnell	2,855.00	1985.00
May	25	Smithdeal R. & Ins. Co	D. S. Tucker	3,100.00	1800.00
May	31	Fred Hutchins	T. E. Frye	2,500.00	2000.00
June	2	Cobb Noble Co.	C. H. Wells	1,000.00	3640.00
May	31	Wachovia B. & Trust Co.	Rabbi K. Smulin	3,500.00	1743.00
Feb.	2	L. C. McKaughn	C. H. Smith	1,900.00	2000.00
Jan.	25	E. P. Yates	A. F. Moses	1,000.00	1000.00
Feb.	18	W. T. Wilson	Merchants B. & TrustCo	2,982.50	3250.00
Jan.	13	J. H. Whicker	F. L. Pool	7,903.00	6250.00
Mch.	16	J. D. Waggoner	H. F. Samuel	1,600.00	610.00
Mch		W. C. Sale	S. P. Sale	1,100.00	800.00
Mch.	25	Jno. C. Wallace	B. C. Tavis	1,175.00	700.00
Mch.	26	D. H. Blair	J. A. Tise	5,550.00	4340.00
Mch.	29	Merchants B. & TrustCo.	L. C. Oakley	5,075.00	5000.00
Apr.	4	W. A. Lumly	Dr. William H.Bruce	1, 643.27	1800.00
Mch.	21	D. H. Blair	A. B. Elam	1,575.00	1400.00
June	1	D. H. Blair	Merchants B. & TrustCo	2,770.00	2600.00
June	8	H. O. Sapp	Merchants B. & TrustCo	2,000.00	1000.00
June	14	E. P. Yates	J. H. Clinard	1,000.00	1000.00

rp6

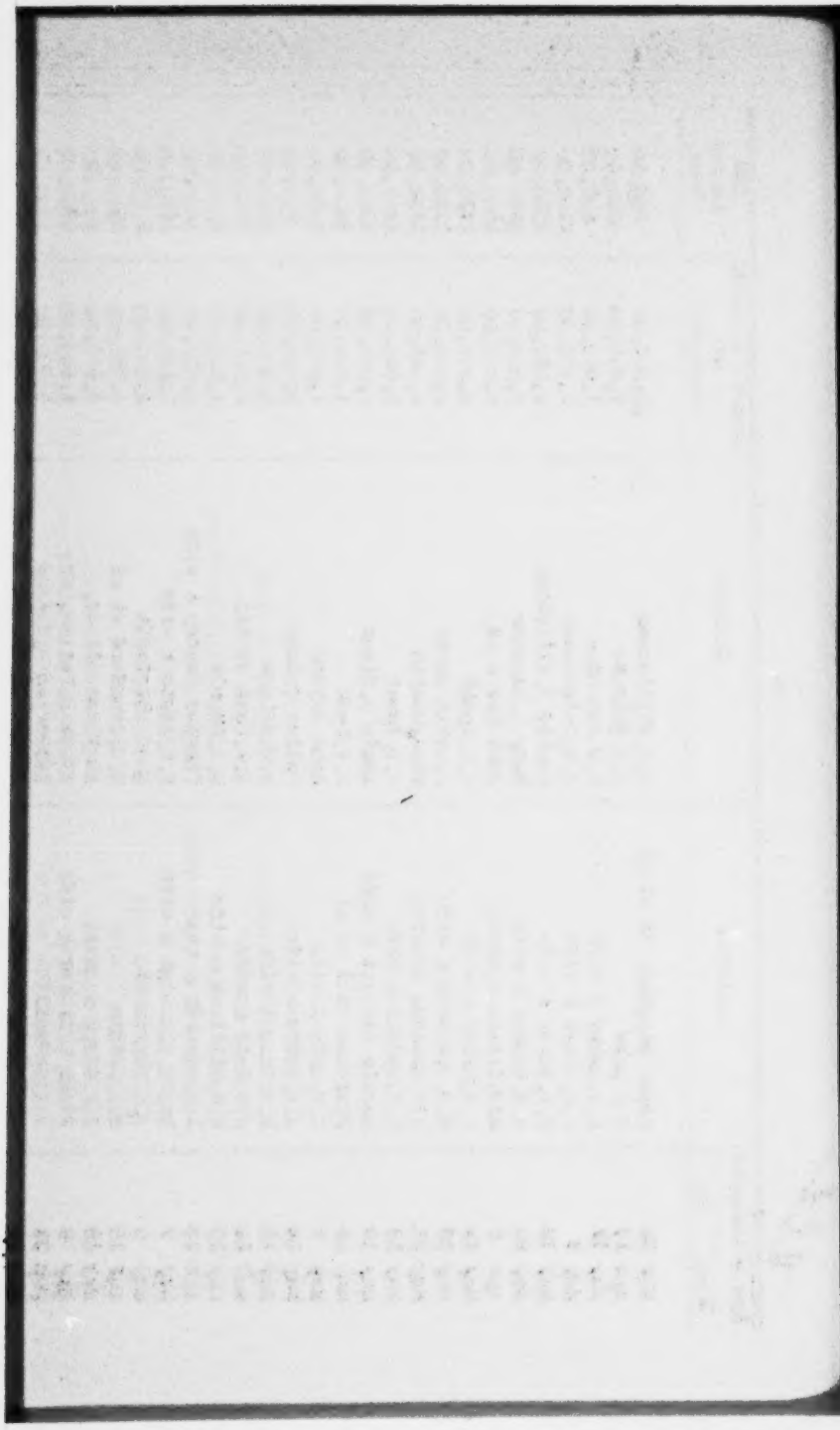
Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
March	7	Fred Sheetz,et al.	M. S. Kesler	2,500.00	Church
March	1	F. B. Benbow	M. L. Kesler, et als.	5,500.00	Church
March	7	Mary Sue Ethridge	M. L. Kesler, Et als.	1,750.00	Church
March	4	Herbert Vogler	M. L. Kesler, et als.	1,750.00	Church
April		R. J. Jordan	A. A. Jordan	1,000.00	1250.00
May	15	R. J. McCullum	Roy Thomasson	1, 000.00	1000.00
Jan.	24	E. W. Anerum	M. P. Matthews	2,000.00	6200.00
May	27	J. J. Currin	Raymond G. Parker	1,000.00	500.00
Apr.	30	A. V. Nash	John Banner	2,500.00	850.00
May	21	T. W. Watson	Agnes R. Jones	1,100.00	1425.00
Apr.	30	A. V. Nash	S. D. Porter	2,500.00	2000.00
May	27	M. Sosnick	W. J. Hylton	2,000.00	1500.00
May	27	W. V. Hylton	A. Shapiro	5,760.00	600.00
May	4	C. L. Joyner	A. B. Young	1,150.00	1086.00
May	27	Wachovia B. & TrustCo	J. W. Fulp	1,500.00	866.00
May	31	Isaac Washburn	Daisy M. Stack	4,200.00	2500.00
May	11	J. H. Whicker	William W. Foushee	1,000.00	1100.00
Jan.	6	J.L.Roberts	J.G.Neal	2,000.00	1800.00
Jan.	1	Charlie Moore	B.C.Tavis	1,800.00	2000.00
Feb.	14	Cora R. Beckner	Nancy Sides	7,000.00	4670.00
Feb.	18	Flora Swaim	Rachel P. Brown	1,000.00	825.00
June	18	W.T.Whitsett	L.F.Owen	4,000.00	3250.00
June	21	M.P.Watts	J.G.Clayton	4,000.00	4000.00
Apr.	28	W.B. & Tr. Company	Nathan Berlin	2,000.00	1000.00

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Apr.	5	Troy Clemont	A.A.Hunt		
Apr	22	J. A. Mackie & wife	J.W.Purvis	1,000.00	700.00
Apr	1	E.B.Idol and wife	J.W.Kenny	1,000.00	600.00
Mar	17	Sam Kahre & wife	Max Kahre	2,000.00	1660.00
Mar	14	R.L.Bolton & wife	K.M.Cushion & wife	7,000.00	17000.00
Mar	4	E.B.Idol & wife	John Hedgecock	5,800.00	2900.00
Apr	7	Harly Glime & wife	W.H.Dodson	3,000.00	3240.00
Apr	1	Geo. F.Montgomery et al	Banner Ins. Company	1,800.00	1000.00
Apr	21	W.L.Robison	J.A.McDowell	3,000.00	3000.00
Apr	1	J.I.Pfaff & wife	Geo. R. Montgomery	5,000.00	2500.00
Apr	7	Henry H.Bryant & wife	R.L.Bennett	2,000.00	1760.00
Apr	6	Evelyn O Apple et al	Southern L & Dis Co.	1,000.00	400.00
Apr	5	Mrs. Bettie T. Cumbie	G.G.Wall & wife	2,000.00	1800.00
Apr	2	W.J.Wall and wife	M.P.Watts	1,000.00	1200.00
Apr	2	C.S.Johnson	Mrs Margaret R.Clayton	4,000.00	3000.00
Apr	2	C.S.Johnson	Wm. E. Spaugh	1,000.00	400.00
Apr	26	A.B.Elam & wife	Martha A.LeGrande	1,000.00	4600.00
Mar	29	D.H.Blair, Trustee	E.Fuller Conrad	2,000.00	750.00
Apr	7	E.C.Emmore & wife	C.W.Reay	1,070.00	750.00
Mar	22	Mrs. Alice W. Page	T.J.Walker	4,000.00	2750.00
Apr	5	A.V.Nash and wife	Florence Wall	15,000.00	20675.00
Mar	5	J.A.Koontz & wife	Annie S. Koontz	2,800.00	800.00
Apr	4	H.H.Feimster & wife	J.Henry Craft & wife	4,000.00	4200.00
Apr	12	J.M.Swain	H.N.Bell	1,500.00	800.00
Mar	19	M.C.Disher	C.O.Griffin and wife	1,000.00	800.00
Apr	2	C.K.Speck & wife	S.F.Cude	1,000.00	2400.00
Apr	13	C.M.Thomas & wife	Mary T.Grogan	1,000.00	1565.00
Mar	8	J.S.Cowles	Fred Davis & wife	1,000.00	500.00
Apr	8	W.P.Hill & wife	Banner Investment Co	1,000.00	1500.00
Apr	7	Jas. A. Gray and wife	W.R.Clark	1,000.00	650000
Apr	5	W.A.Spear & wife	May Spear	2,000.00	1400.00
Feb	18	Irvin A.Harper & wife	J.R.Gregory	5,000.00	3000.00
Apr	11	A.V.Nash & wife	Mrs. F.O.Braswell	2,800.00	1120.00
Apr	16	R.L.Cox	W.A.Gross	1,000.00	600.00
Apr	18	Rosa Borrier & wife	Gleem Teague	1,000.00	3025.00
Mar	15	A.E.Hooton & wife	Brown Rogers Company	4,250.00	2800.00
Feb	26	T.V.Edmunds & wife	Joseph Kenny	15,000.00	12000.00
Apr	18	E.C.Tevis & wife	Henry Paul Foster et al	4,000.00	2800.00
Apr	21	Dr. Eugene T Cox & wife	W.E.Martin	1,000.00	1000.00
Apr	16	Mrs. Grace Hensel	J.P.Lacy & wife	2,500.00	1950.00
Apr	18	R.A.Pfohl & wife	Amelia Fischer	5,000.00	5600.00
Feb	12	Burton Craige et al	Ida M.Galloway	4,250.00	5000.00
Apr	19	Dr. J.C.Williamson et al	L.C.Kerns	10,000.00	3750.00
Mar	30	W.J.Dillon & wife	E.J.Wishon & wife	2,800.00	1800.00
Apr	1	H.D.Shutt & wife	B.B.Walker	2,500.00	2200.00
Mar	18	Carney W. Mimms et al	B.B.Walker	2,000.00	700.00
Apr	15	H.W.Foltz & wife et al	G.F.Turley	6,000.00	5000.00
Apr	20	Mrs. Sadie E Wilson et al	Elizabeth C.VaughanLloyd	1,800.00	750.00
Mar	25	Laura E Kapp et al	M.K.Rubais	4,000.00	4250.00
Feb	22	G.A.Whitaker & wife	S.W.Kagar	1,200.00	3665.00
				4,670.00	3500.00

AC+

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Apr	27	C.H.Jones	Emma Anderson	1,000.00	850.00
Apr	22	C.H. Jones	C.W. Williams	2,000.00	2950.00
Apr	25	E.J.Neale & wife	Cobb-Noble Company Inc	4,000.00	3000.00
Apr	7	L.S.Lloyd & wife et al	Cobb-Noble Company	3,800.00	1600.00
Feb	15	The Congregation et al	Twin City Athletics Co.,	13,500.00	1650 .00
Apr	22	Jas.A. Gray & wife	Sentinel Printing Co Co	2,500.00	150 .00
Apr	9	Nat Martin et als	W R Kiser	1,600.00	1600.00
Apr	28	V.E.Barnes & wife	B F Myers, P W Brame et als	12,000.00	3000.00
Apr	27	Ella M.Hinshaw et als	Grady C.Hadley	1,000.00	350.00
Apr	29	W C Hinston & wife	H Clay Harris	5,800.00	4000.00
Apr	28	Geo B. Whitaker & wife	B.H. Blair	7,000.00	3060.00
Apr	1	Mrs. Mary T.Leckett	Eugene Suggle & wife	3,000.00	1100.00
Apr	1	James Johnson	Mattie C.Disher	1,000.00	1500.00
Apr	25	J.F.Hall & wife	F. T. Jones et al	1,000.00	600.00
Apr	25	Jas F Hall & wife	T.J.Swing	1,000.00	500.00
Apr	6	P.F.Horton & wife	Salem Academy & College	2,000.00	1200.00
Mar	7	T.Bryson & wife	B.K.Millsaps	10,500.00	6900.00
Jan	14	.C. Johnson & wife	J.G.Wilson	4,500.00	2400.00
Apr	22	Thos.W.Davis & wife	Woodland Ave.Park Co	9,500.00	12000.00
Jan	11	J.H.Whicker & wife	Lawrence Bryson	2,500.00	1300.00
Apr	20	R.C.B.Linville & wife	City of Winston-Salem	8,500.00	3048.00
Mar	31	David E.Wright	N.Cray Doub	1,000.00	800.00
Apr	11	H.Q.Smith and wife	R.M.Spach	2,000.00	1000.00
Apr	12	C.T.Bagley & Laura	H.C.Tavis	1,500.00	1550.00
Apr	12	Zella Hutchins	Lavian Norwood	1,000.00	480.00
Apr	18	G L Leonard & wife et al	R.C.Barrier & wife	1,000.00	650.00
Apr	16	Thomas A Long and wife	J B Lemons	2,375.00	1700.00
Apr	15	G.L.Pope & wife	J.A.France & wife	1,200.00	2600.00
Mar	11	T.F.Vincennes et als	B B Walker	2,300.00	1800.00
Apr	23	H P Price	M.V.Williams	1,500.00	1000.00
Feb	14	S V Burge & wife	J.K.Slate	2,900.00	900.00
Apr	15	W b Cook & wife	Charles C.Lawson	2,100.00	1750.00
Apr	1	J W Brown & wife	A.W.Davis & wife	8,500.00	6000.00
Apr	1	Mattie C.Disher, Com	James Johnson	1,600.00	1400.00
Apr	30	J R Hastings & wife	J.N.Davis, et al	3,000.00	2250.00
Apr	20	J A P Wolff & wife	Ernest Newsom	2,500.00	2500.00
May	2	J P Lacy & wife	H.C.Snyder	7,812.00	5500.00
Mar	16	J N Ambler & wife	Carney W. Mimms & wife	17,000.00	11250.00
Mar	19	J C Spach & wife	Trustees, S S Bapt.Ch.	2,000.00	1700.00
Feb	2	K C Land & wife	Grace B. Allen	2,500.00	2150.00
May	2	Mrs.Rosa L.Hunnicutt	P.E.Parrish	1,500.00	1500.00
Apr	30	R M Simmons & wife	Chas.F.Snow	6,500.00	3500.00
Apr	13	Geo B. Whitaker & wife	Louis Roush	5,500.00	3500.00
May	2	Clyde C.Culler & wife	L.F.Shinen	5,500.00	3500.00
Apr	28	Bennie F.Evridge & wife	H.L.Lashmit	3,000.00	2400.00
May	5	Luther Kellum & wife	M.Mitchell et als	2,000.00	1000.00
May	5	Frank Powers & wife	Miss Ada Waddell	1,200.00	1000.00
May	7	E.A.Hilton	W.T.Dowell & wife	1,000.00	800.00
Mar	6	A.B.Elam & wife	T.W.Mimms	1,000.00	1275.00
May	2	M.Mitchell et als	T.A.Davis & wife	2,500.00	2400.00
Mar	17	F.L.Poole & wife	Lizzie Brown	8,000.00	4825.00
Mar	23	Archie Aaron et als	J.C.Williamson	1,500.00	1000.00

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Mar	23	Peter Higgins, Sr et al	J.C.Williamson	$1,200.00	650.00
Apr	19	E A Darr	J.E.Kilerbe	7,500.00	4920.00
May	17	J.P.Ashby & wife	T.D.Jennings	1,000.00	600.00
May	9	C.H.Clark & wife	N.D.Poindexter	3,900.00	2500.00
May	19	T.P.Boger & wife	Nealie E.Tillotson	3,250.00	2350.00
May	20	C.M.Thomas & wife	Ruby L.Wagoner	2,000.00	1500 00
Apr	8	Mrs.Lizzie M.Brown	Cobb Noble Co.	5,000.00	4500.00
May	19	H.E.Fries & wife	S.T.Spaah	2,000.00	1625.00
May	19	T.S.Sprinkle & wife	J.Worth Davis	3,000.00	2920.00
May	21	T.W.Watson, Trustee	Thos.Maslin	4,035.00	3750.00
May	18	C.E.Weddle & wife	N.R.Jones	2,600.00	2200.00
May	19	Martin Bennett & wife	Annie B.Glenn	2,000.00	1960.00
May	24	Florence Wall et al	A.V.Nash	1,500.00	1300.00
Mar	7	C.W.Holt & wife	Rohm Snyder	1,500.00	1050.00
May	26	J.A.White & wife	William C.Long	1,000.00	800.00
May	14	W.A.Lutz & wife	W.W.Briggs	3,500.00	2600.00
May	24	C.C.Sale & wife	A.V.Nash et als	2,500.00	1750.00
May	23	W.A.Williams & wife	M.A.Angelo	2,500.00	2000.00
Apr	23	R.L.Edwards & wife	Charles Pentry & wife	1,500.00	1000.00
May	7	Dr. S.D.Craige & wife	E.T.Joyce & wife	3,500.00	2550.00
May	4	J.G.Merriott	Maud Merriott	2,000.00	6450.00
Apr	18	M.H.Jordan	W.G.Cranford et al	4,360.00	3500.00
Mar	18	E.R.Clapp & Annie	American Oil Co.	3,575.00	3000.00
May	9	Frank L.Crater & wife	Frank B.Foster, Jr	1,500.00	1750.00
Feb	21	J.A.McDowell	Katherine D.Roddey	4,500.00	4000.00
May	14	J.S.Culler & wife	Jefferson Monroe et al	2,500.00	1150.00
May	9	W.J.Ebert & wife	Elsie M De Tamble	1,000.00	650.00
May	7	Ella M.Minaker et als	Elsie M De Tamble	1,000.00	650.00
Apr	18	V.M.Swain & wife	Walter C. Greenwood	1,000.00	1000.00
May	14	Frank T Baldwin	E.E.Shumate & wife	5,000.00	2500.00
May	6	Wm.F.Munse & wife	S.M.Vernon	1,000.00	475.00
Apr	4	E.T.Anderson & wife	M.W.Norfleet	1,500.00	750.00
May	9	Frank L.Crater & wife	J.T.Wasley	1,500.00	615.00
May	20	James A. Hutchins & wife	R.C.Ryan	19,000.00	6500.00
Mar	21	James A.Gray et als	Mrs.Grace Hensel et al	12,500.00	8000.00
May	13	Annie C. Hampton	W.C.Northrup	5,500.00	3900.00
May	12	W.B.Phillips & wife	J.H.Turner & wife	1,200.00	1060.00
Apr	16	T.H.Pegram & wife	Mary E.Dowell	2,000.00	1750.00



167 *Affidavit of Philip L. Kainer.*

Filed Jan. 20, 1922.

STATE OF NORTH CAROLINA,
County of Forsyth:

Affiant, Philip L. Kainer, says that he is a resident of Winston-Salem, N. C., having worked in the law offices of C. A. Vogler and Craige & Vogler for several years, and has been a resident of Forsyth County for twenty-eight years; that he has made an examination of all deeds recorded in Forsyth County from January 1, 1921, to June 30, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000), and also of the assessed value of the real estate embraced in said deeds for the year 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the considerations shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: From the amount of Federal Tax imposed and entered on the record, viz.: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents, and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $484,353.00, and that the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $364,553.00. The statement is attached hereto, initialed and numbered — to —.

PHILIP L. KAINER,
Affiant.

Subscribed and sworn to before me this 14th day of January, 1922.
My commission expires October 5, 1922.
[SEAL.] FRANCES ADAIR JONES,
Notary Public.

Approved:
GRAIGE & VOGLER,
By C. A. VOGLER.

(Here follows table marked pages 168, 169, and 170.)

171 *Affidavit of C. A. Vogler.*

Filed Jan. 20, 1922.

STATE OF NORTH CAROLINA,
County of Forsyth:

Affiant, C. A. Vogler, says that he is a practicing attorney at the Winston Salem Bar, and has been a resident of Winston Salem for 36 years; that he has made an examination of all deeds recorded in the Reg. of Deeds Office of Forsyth County, N. C. from January 1, 1921, to June 30, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000), and also of the assessed value of the real estate embraced in said deeds for the year 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the considerations shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: From the amount of Federal Tax imposed and entered on the record, viz.: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents, and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $630,512.00, and that the total assessed values for taxation for the year 1921 of the property embraced in said deds contained in said statement amount to $481,586.70. The statement is attached hereto, initialed and numbered — to —.

C. A. VOGLER,
Affiant.

Subscribed and sworn to before me this 14th day of January 1922.
[SEAL.] FRANCES ADAIR JONES,
Notary Public.

My commission expires Oct. 15, 1922.

(Here follows table marked pages 172, 173, and 174.)

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Feb.	17	J. W. Hartman et al	J. H. Wimbish	$3,000.00	3500.00
Feb.	18	H.D.Kester & Wife	T. W. White	3,000.00	2800.00
Feb.	17	Carl F.Nissen & Wife	J.Wilbur Crews & Wife	2,000.00	700.00
Feb.	17	Mrs. Mary J. Weir	J. H. Hellard	1,000.00	300.00
Jan.	22	J.W.Flynt & Wife	J. G. Flynt	2,700.00	1395.00
May	1	J. C.Spach & Wife	G.L.Leonard	2,500.00	1500.00
Feb.	4	A.Lefkewitz & Wife	W.C.Smith	2,000.00	1500.00
Feb.	19	J.M.Yokley & Wife	K.H.Rich	2,450.00	1500.00
Feb.	23	Isaac Dalton,Guardian	Adlophus Stoltz	2,000.00	1921.70
Feb.	23	Adolphus W.Stoltz etal	Grandsian Dalton,Truste	2,000.00	1375.00
Feb.	24	Belle Burke	Timothy Transou	8,000.00	5500.00
Feb.	24	C.H.Jones,Trustee	Armeta S.Willis	4,000.00	2500.00
Feb.	26	W.H.Martin & Wife	D.M. & D.E. Clinard	2,500.00	2100.00
Feb.	24	Mary A.Poindexter etal	Sid Holt	2,000.00	2100.00
Feb.	23	Josephine Reece et al	W.S.Caudle	2,000.00	2120.00
Feb.	24	J.B.Willis & Wife	C.H.Jones,Trustee	1,000.00	850.00
Feb.	25	A.B.Fulton & Wife	W.A.Bell & Wife	3,000.00	2000.00
Feb.	11	W.H.Long & Wife	C.E.Hunter	3,700.00	4000.00
Feb.	26	H.E.Oehman & Wife	C.L.Nichols & E.A.	2,500.00	2500.00
Jan.	26	R.C.Perry	M.C. Venable	2,000.00	1500.00
Feb.	24	Errett Straley et al	C.C.Smithdeal	8,000.00	4100.00
Feb.	23	Freeman J.Thomas	T.B.Scott	3,000.00	1250.00
Feb.	28	S.L.Brown & Wife	J.W. Grey	2,500.00	1650.00
Feb.	17	M.A.Walker,Jr.	R.I.Dalton	15,000.00	13000.00
Feb.	17	M.A.Walker,Jr. & Wife	S.Clay Williams	40,000.00	29500.00
Mar.	1	T.F.Westmoreland,Adm	W.M. Vantroy	1,125.00	3300.00
Feb.	28	John G.Daniels et al	John S. Phelps	1,200.00	1377.00
Mar.	3	William T.Eddings etal	W.O.Gilbert	1,000.00	1100.00
Mar.	3	J.E.Hege et al	A.V.Nash	1,500.00	1400.00
Mar.	3	J.G.McCuiston	M.E.Propst	1,000.00	930.00
Mar.	2	Hazel D.Norfleet et al	J.E.Kennerley	4,500.00	1500.00
Feb.	23	B.L.Nelson & Wife	J.A.Murry	3,000.00	2465.00
Mar.	1	J.L.Wimbish & Wife	Farm Development Co.	20,000.00	14500.00
Feb.	28	John L. Wimbish	F.N.Hanes	10,000.00	8000.00
Feb.	28	John L. Wimbish	F.W.Hanes	4,000.00	5100.00
Mar.	1.	Mrs.P.C.Johnson et al	C.P.Johnston & Wife	3,500.00	2500.00
Mar.	3	J.A.Koontz & Wife	Anna S.Koontz	3,000.00	750.00
Mar.	1	J.C.Walker & Wife	Sam F. Vance	5,000.00	2250.00
Feb.	25	J.G.Wimbish & Wife	Frank Raiff	15,000.00	13500.00
Feb.	1	J.M.Ingram	Maggie Flynt Ingram	1,000.00	750.00
Mar.	4	W.A.Joyner & Wife	John Clinard	3,000.00	1700.00
Mar.	3	W.L.Jones & Wife et al	S.P.Wright	1,675.00	1050.00
Feb.	15	Ernest Kiger & Wife	Bell Mayton	1,350.00	1200.00
Mar.	3	G.L.Leonard & Wife	J.V.Macy	2,500.00	2500.00
Mar.	2	John W.Marshall et al	Chas. H.Marshall et al	7,000.00	6500.00
Mar.	3	C.M.Bernard & Wife	Frank Raiff & Wife	15,000.00	13000.00
Mar.	7	S.H.Speas	J.T.Speas	3,000.00	6000.00
Mar.	3	T.B.Stanley et al	Frank T.Baldwin	3,500.00	2400.00
Mar.	3	Thomas W. Allen & Wife	Majorie Roth Kennickell	4,000.00	2000.00

Mar. 15	Agnes H.Davis	W.L.Nifong	1,000.00	750.00
Jan. 17	Laura J.Hall et al	Wm.T.Boger & Wife	1,100.00	890.00
Mar. 14	R.J.Jordan & Wife	C.W.Mimms	1,000.00	6000.00
Mar. 12	Leslie O.Kirkman	F. J. Thomas	2,000.00	1500.00
Mar. 15	Elsie H.Livengood etal	D.W.Magie	12,000.00	7500.00
Mar. 17	D.M.Smith	C.H.Cowles	2,500.00	1400.00
Mar. 17	J.A.White & Wife	Harvey White	1,000.00	750.00
Mar. 17	Lindsay Fishel & Wife	T.R.Jenkins & Wife	1,100.00	1000.00
Mar. 17	J.O.White & Wife	H.A.Pfohl et al	2,500.00	1200.00
Mar. 1	Ham Hester & Wife	Thomas M. Bowman	2,500.00	1615.00
Mar. 14	J.G.Wall & Wife	C.J.Livengood	3,000.00	2400.00
Mar. 17	E.S.Porter & Wife	Pilot Real Estate Co.	2,500.00	1800.00
Mar. 15	A.V.Nash & Wife	Julius D. Neely	1,600.00	1000.00
Mar. 15	Thos. H. Haskins & Wife	L.B.Womble	4,000.00	2750.00
Mar. 15	Sarah B.Hurdle et al	L.C.Hubson	4,500.00	4000.00
Mar. 12	C.S.Cude & Wife	S.E.Hauser	3,000.00	2575.00
Mar. 22	B.C.Brock & Wife	S.Carter Williams	1,500.00	600.00
Mar. 18	Mary Sue Etheridge	A.L. & Sallie Powell	3,000.00	2500.00
Mar. 22	C.L.Bigby & Wife	Wm.H.Neal	2,500.00	2140.00
Mar. 22	G.H.Craft & Wife	O.R.Penny & Wife	1,000.00	500.00
Mar. 5	J.C.Womack	W.M.Hanes	33,000.00	21700.00
Mar. 23	J.M.Newberry & Wife	J.C.Womack,Sr.	9,600.00	7350.00
Mar. 24	H.W.Huffman & Wife	James C. Gatewood	1,000.00	800.00
Mar. 21	Mildred Baynes et al	W.R.Pendry	5,000.00	2700.00

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Mar.	8	J.M.Brown & Wife	R.S.Miller & Wife	$2,000.00	1100.00
Mar.	8	L.C.Crotts & Wife	B.H.McCrary	2,500.00	2200.00
Mar.	7	Minnie H.Fitzgeraldetal	Aubrey R.Flynt et al	1,100.00	750.00
Mar.	2	A.B.Cook & Wife	T.C.Pritchard	1,000.00	600.00
Feb.	28	J.W.Guy & Wife	Mytie Baugess	1,500.00	1500.00
Mar.	14	C.G.Thornlaw,Adm.	J.F.Bodenheimer	1,405.00	1300.00
Feb.	15	Robt. Patterson et al	C.S.Cude & Wife	2,750.00	2575.00
Feb.	15	Hinshaw Heirs	Dunklee & Alexander	17,000.00	9335.00
Mar.	9	C.L.Holland et al	M.H.Willis	1,700.00	1320.00
Mar.	7	R.F.McNeil et al	Devoe C.Clinard	2,000.00	1700.00
Jan.	20	C.E.Hunter & Wife	J. P. Nance	2,000.00	1300.00
Mar.	12	Laura F. Miller et al	W.G.Jerome	1,500.00	2575.00
Mar.	12	W.P.Reid	Allie Gooch Reid	3,000.00	4300.00
Mar.	9	Helen Nissen Froelichetal	J.Wilbor Crews etal	1,500.00	875.00
Feb.	15	Patterson Exec.	T.G.Trivette	2,275.00	2075.00
Mar.	14	W.M.Perabee & Wife	Planters Ind.Tob WHCo.	2,000.00	2000.00
Mar.	3	J.A.Mackie & Wife	J.E.Kennerley	2,000.00	1500.00
Mar.	12	N.J.Teague & Wife	J.R.Weaver & Wife	2,500.00	1500.00
Mar.	1	Sadie M.&LettieE.Green	Cobb Noble Company	1,000.00	700.00
Mar.	15	J.W.Hester & Wife	L.C.Dula & Wife	2,200.00	2400.00
Feb.	9	H.R.Jordan	C.H.Harden & Wife	2,500.00	1600.00
Mar.	15	S.C.Ripple & Wife	C.W.Rothrock	6,500.00	4875.00
Mar.	14	J.R.Weaver & Wife	J.R.Owen & Wife	1,400.00	1100.00
Jan.	1	David White et al	H.R.L. Ins. Company	76,500.00	54000.00
Mar.	11	W.P.Reid	J.H.Clement	1,000.00	1500.00
Mar.	16	Geo.M.Kake	Allen L.Lemons	2,500.00	1500.00
Mar.	8	J.A.McDowell	T.J.Simpson	8,500.00	4500.00

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Mar.	9	Lettie Levy	Mike Levy	4,000.00	3850.00
Mar.	19	W.O.Gilbert & Wife	Mars Sarah L.Kallam	6,500.00	3500.00
Mar.	23	Sallie Styers	E.D.Myers & Wife	1,000.00	1800.00
Mar.	25	Geo.E.Davis & Wife	J.H.Newberry	2,500.00	1500.00
Mar.	19	S.P.Sale & Wife	A.V.Nash	1,400.00	800.00
Mar.	29	J.T.Knouse & Wife	Thomas Maslin	3,500.00	5000.00
Mar.	29	Mrs. Mary S.Vance etal	H.F.Samuels	4,000.00	2250.00
Mar.	25	Hinshaw Heirs	Lucien Fulton	4,000.00	1748.00
Mar.	17	Sallie Powell et al	Annette W.Chance	4,500.00	2500.00
Apr.	1	A.B.Elam & Wife	John H. Kirk	1,500.00	1250.00
Mar.	22	E.H.Holton et al	E.E.James et al	7,500.00	7000.00
Mar.	16	G.H.Croft	L.A.Reynolds	1,000.00	325.00
Mar.	25	K.M.Cashion & Wife	Annie S. Disher	9,500.00	3850.00
Mar.	30	A.R.Bridges & Wife	R.R.Morgan	1,000.00	600.00
Mar.	18	Congregation of U.B	C.T.Lineback	2,000.00	1400.00
Mar.	17	C.T.Joyce & Wife	Mrs. O.T.Brown	3,000.00	1500.00
Mar.	26	W.S.Lindsay & Wife	Errett Straley	6,000.00	1500.00
Mar.	31	Geo.W.Coan,Sr. et al	Henry Harris & Wife	16,500.00	12125.00
Mar.	26	S.L.Jenkins & Wife	Chas. Graner & Wife	6,000.00	3750.00
Mar.	22	S.W.Kager & Wife	Rosa Levy	1,500.00	1200.00
Mar.	15	A.C.Cline & Wife	E.C.Hege	1,400.00	1275.00
June	7	J.H.Faries & Wife	E.A.Bovenier	2,500.00	1950.00
May	1	Arch B.Taylor & Wife	James W.Minter et al	2,000.00	1600.00
Jan.	5	Louise J. Wall et al	Eva Wall	2,864.00	2200.00
June	22	J.E.Kennerly & Wife	Walter Dickson	8,000.00	6000.00
May	1	R.M.Hanes & Wife	Mrs. Gertrude Brinkley	5,500.00	4500.00
June	15	J.J.Leight & Wife	Orinoco Supply Co.	3,000.00	3030.00
Apr.	9	W.E.Everidge & Wife	C.D.Carroll	1,500.00	200.00
May	25	N.B.Braswell exc.	B.F.Fulp & Wife	1,500.00	750.00
Jan.	24	J.B.Hughes & Wife	T.H.Murray	1,500.00	700.00
Mar.	11	W.H.Ball & Wife	J.A.Thomas	2,000.00	6500.00
June	27	Philip Deitz & Wife	Chas. F.Deitz	8,000.00	600.00
Apr.	30	S.T.Moses & Wife	E.M.Hartman	n 1,800.00	2100.00
Mar.	30	John G.Fulton & Wife	O.L.Gerrey	1,000.00	2300.00
May	19	H.J.Clinard & Wife	Frank Eavens	2,000.00	1685.00
June	27	H.C.Flynt & Wife	Joe F.Grubbs	1,000.00	865.00
Mar.	11	C.E.Ebert & Wife	Wm.C.Taylor	1,093.00	350.00
June	11	Oscar M.Teague	Clara L.Teague	1,500.00	1500.00
June	16	John H.Smitherman etal	O.W.Baynes	2,000.00	800.00
June	11	W.H.Foster & Wife	Mattie Carter	2,000.00	1125.00
June	2;	E.A.Kreeger & Wife	J.C.Graham,Jr.	1,000.00	3080.00
Apr.	19	JohnJordan	L.A.Jordan	1,000.00	700.00
Mare	18	JE.Williams & Wife	Grady C.Stone	1,000.00	500.00
June	20	C.M.Thomas & Wife	F.L.Sanders & Wife	1,500.00	500.00
Feby	15	Robert Paterson et al	E.S.Cude	2,275.00	2175.00
Apr.	30	Thorn Warner	J.N.Davis & Wife	1,000.00	1020.00
June	2	Mrs. W.S.Hooper et al	Charlie Walser & Wife	1,250.00	700.00

AC

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
June	1	Thos. H. Battle et ux	H. L. Battle ($5. tax)	$5,000.00	$3,400.
Jan.	1	C. B. Braswell et ux	R. M. Collins	7,500.00	3,862.
"	10	Sammie Joyner, Jr.	Dovie Joyner	1,000.00	1,250.
"	10	Arthur Arrington et ux	J. A. Freeman	1,900.00	937.
"	7	J. F. Raynor et ux	J. T. Nichols	7,000.00	2,100.
"	14	Dr. H. Brantley et ux	J. C. Brantley	10,000.00	2,437.
"	7	R. L. Bryant	J. W. Finch	12,050.00	3,985.
"	25	G. K. Batchelor et ux	J. C. Batchelor	1,700.00	688.
"	19	V. J. Perry	H. L. Bailey	3,000.00	1,263.
"	28	H. E. Brewer et ux	J. M. Batts	1,250.00	350.
"	31	Milley Woodley et als	T. A. Cooper	2,000.00	1,850.
"		D. B. Faison et ux	Isabel Faison	4,000.00	2,400.
Feb.	1	J. G. Daniel et ux	Mullie B. Daniel et al	1,522.50	700.
Jan.	21	B. F. Winstead et ux	Bulluck Furniture Co.	4,725.00	3,400.
"		A. B. Capps et ux	E.W. & Z.B.Bulluck	4,000.00	3,687.
Feb.	4	W. A. Finch, Trustee	Stephen Eatman	2,000.00	1,337.
Jan.	1,	John H. Taylor et als	Beulah J. Fuller	1,400.00	500.
Feb.	4,	F. R. Joyner et ux	L. A. Baker	3,000.00	2,240.
"	11,	Z. H. Wheless et ux	R. D. Bowden	1,250.00	975.
"	14	O. D. Fisher et ux	J. O. W. Gravely	2,000.00	1,060.
"	15	T. T. Thorne, Trustee	T. L. Bland	1,725.00	700.
"	16	J. P. Bunn, Trustee	W. H. Davis	4,600.00	1,750.
"	22	Fred Watson et ux	H. L. Hicks	8,500.00	4,400.
"	24	A. H. Hilliard et ux	J. J. Rollins	2,000.00	1,440.
"	10	J. E. Lane	Z. B. Bulluck ($3. tax)	3,000.00	1,375.
"	15	A. S. Vick	Allie S. Cornwell	1,800.00	900.
"	26	L.L.Davenport, Trustee	G. W. Joyner	5,000.00	2,350.
"	10	Jesse E. Scott et ux	J. M. Fox	2,100.00	1,440.
Mar.	11	E. L. Boone	W. B. Rice	1,500.00	640.
Jan.	3	J. T. Oakey	W. C. Gilliam	4,000.00	2,400.
Mar.	12	C. F. Rich, Trustee etc	W. B. Williams	1,255.00	637.
"	22	T. A. Avera, Trustee	R. K. Bryant	7,000.00	3,680.
"	25	W. R. Patterson et ux	J. P. Duncan	2,371.00	1,387.
"	16	Addie Parris	Lucinda B. Babcock	1,050.00	560.
"	21	M. T. Strickland et ux	L. T. Vaughan	26,301.24	5,320.
"	28	G. L. Pitt	C. E. Pitt	4,000.00	2,625.
Feb.	14	M.V.Barnhill, Comr.	E. R. Dew	2,825.00	2,400.
Mar.	30	B. W. Upchurch	Jacky Ann Bone	1,075.00	250.
"	8	L. T. Penniman	D. J. Rose	4,000.00	2,400.
Apr.	13	J. D. Odom	S. E. Ballentine	2,400.00	900.
Feb.	24	J. L. Cornwell, Sheriff	W. C. Taylor	3,500.00	3,022.
Apr.	9	W. L. Thorpe et als	J. T. McGowan	4,000.00	1,500.
"	20	J. T. Boseman et ux	T. L. Vernon	3,000.00	1,700.
"	26	M. V. Barnhill, Comr.	W. J. Archbell	1,017.50	808.
"	20	B. J. Downey et ux	Evangaline BouFarrah	3,500.00	1,394.
Jan.	26	Wade Chestnut et ux	Sarah Johnson et al	1,500.00	640.
Apr.	15	S. F. Austin, Trustee	R. L. Baker	20,000.00	8,860.
"	15	S. F. Austin, Trustee	R. L. Baker	5,000.00	875.
"	15	B. J. Dunning et ux	Dora Earl Neas	5,500.00	2,280.
"	28	W. B. Rice	W. D. Rice	1,600.00	640.
May	18	W. C. Vaughan et ux	Sudie Lamm	3,000.00	2,250.
Feb.	22	J. K. Smith	L. B. Joyner	1,500.00	1,025.
Apr.	18	L. E. Braswell	C. C. Long et ux	3,500.00	1,050.
May	14	W. L. Thorpe et als	Bessie H. Fleming($5 tax)	5,000.00	3,160.
"	25	R. T. Jeffreys	E. I. Fleming	2,065.00	600.

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
June	7	Chrissie Girdwood	C. B. Spruill et al	$3,500.00	$750.
"	18	J. J. Joyner	F. W. Ham et al	1,450.00	500.
"	27	Ruffin Liles	Middlesex Supply Co.	1,245.50	875.
"	1	Elizabeth G. Hilliard	W. T. Pate	2,000.00	1,020.
"	27	John T. Taylor et als	Katharine G. Goddard	1,050.00	480.
"	21	Ry Mt Sav & Trust Co.	W. B. Williams	3,340.00	1,600.
Apr.	6	D. J. Rose et ux	Neta P. Rose ($2. tax)	2,000.00	600.
Jan.	1	W. D. Boseman et ux	F. P. Spruill	7,600.00	1,900.
Feb.	18	M. Tant et ux	Mrs. J. A. Sykes	3,500.00	1,875.
Jan.	1	E. F. Vester et ux	J. A. Tunnell	5,000.00	1,712.
"	3	P. A. Holden et ux	F. C. Winters	3,300.00	1,200.
"	1	Sam Liles et ux	R. H. Ferrell	2,500.00	687.
Feb.	1	J. E. Freeman	J. A. Freeman	2,500.00	1,320.
"	1	John T. Vick	Mattie J. Vick	1,600.00	2,315.
"	14	J. B. Green et ux	I. Woodall Rose	1,250.00	300.
"	10	T. D. Williams et ux	W. B. Williams	1,500.00	676.
"	2	R. D. Bowden	Alverranda Bowden	1,500.00	875.
Jan.	1	Mrs. Florence A. Philips	E. G. Battle	27,500.00	11,513.
Feb.	25	W. G. Harper et ux	D. J. Rose	5,450.00	2,000.
"	25	R. C. Hunt et ux	S. J. Bartholomew	4,000.00	2,125.
Mar.	3	T. L. Bland et ux	Claude V. Harris	1,600.00	700.
Jan.	12	C. E. Jackson et ux	Alice Pridgen	3,000.00	1,200.
Mar.	14	R. R. Whitley et ux	W. B. Bergerson	1,222.69	362.
Jan.	1	S. J. Bartholomew et ux	W. M. Morgan	11,700.00	5,960.
Feb.	12	F. A. Lewis	J. A. Lewis	3,000.00	1,000.
"	26	J. B. Ramsey, Trustee	P. C. Vestal	11,200.00	4,750.
Mar.	12	Fisher & Williams	J. T. Fisher, 2/3 int	4,000.00	3,566.
Jan.	14	E. P. Utley et ux	M. J. Hedrick	1,250.00	400.
Apr.	20	J. W. Hines	Lula S. Rives	2,000.00	1,300.
Mar.	3	H. G. Sanders et ux	W. E. Sanders	1,500.00	762.
June	11	L. H. Grimes et ux	M. R. Braswell et als	6,500.00	2,500.
Feb.	10	W. W. Denton et ux	H. L. Bailey ($2.50 tax)	2,500.00	843.
"	25	W. G. Harper et ux	C. V. Williams ($4. tax)	4,000.00	3,400.

175 *Affidavit of J. P. Bunn.*

Filed Jan. 20, 1922.

STATE OF NORTH CAROLINA,
County of Nash:

Affiant, J. P. Bunn, says that he is ——, and has been a resident of Nash County for 44 years; that he has made an examination of all deeds recorded in Nash County from January 1, 1921, to June 30, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000), and also of the assessed value of the real estate embraced in said deeds for the year 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the considerations shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: From the amount of Federal Tax imposed and entered on the record, viz.: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents, and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $361,740.43, and that the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $165,891.00. The statement is attached hereto, initialed and numbered — to —.

J. P. BUNN,
Affiant.

Subscribed and sworn to before me this 13th day of January, 1922. My commission expires Jany. 6, 1924.

[Seal of Edwin C. Smith, Notary Public, Ash County, N. C.]

EDWIN C. SMITH,
Notary Public.

(Here follows table marked pages 176 and 177.)

Filed Jan. 24, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS et al.

C. J. O'Brien, being duly sworn, says that he has brought together the information shown in the attached affidavits, for the several Counties of North Carolina, set opposite the name of each affiant, and finds that said affidavits show:

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Alamance	B. M. Rogers	$517,606.00	$355,184.00	68.62
Alexander	J. P. Crouch	50,175.00	24,860.00	49.54
Alleghany	E. L. McMillan	97,167.56	70,088.00	72.13
Anson	Fred J. Coxe	111,603.42	67,721.00	60.68
Ashe	C. W. Higgins	225,374.89	122,591.00	54.39
Avery	Avery Goodman	63,480.50	52,975.00	83.45
Beaufort	Chas. M. Weeks	555,540.00	393,592.00	70.84
Bertie	P. T. Perry	304,883.80	153,828.00	50.46

Bladen	D. B. Johnson	131,930.00	123,267.00	93.40
Brunswick	L. J. Poisson	61,610.00	44,600.00	72.39
Buncombe	George H. Wright	3,261,452.00	2,255,839.00	69.16
Burke	George H. Battle	96,380.00	51,268.00	53.19

179

Cabarrus	John H. Oglesby	146,619.00	90,602.00	61.78
Caldwell	John M. Crisp	85,905.00	74,960.00	87.26
Camden	P. G. Sawyer and M. B. Simpson	107,200.00	47,024.00	43.85
Carteret	D. W. Morton	121,433.00	119,800.00	98.66
Caswell	E. F. Upchurch	92,506.00	56,660.00	61.25
Catawba	Klutz B. Clippard	369,116.00	211,231.00	57.22
Chatham	Jas. L. Griffin	99,445.00	58,594.00	58.90
Cherokee	W. M. West	128,522.00	84,042.00	65.39
Chowan	R. W. Boyce	106,545.00	97,300.00	91.32
Clay	Wayne L. Swanson	54,550.00	39,010.00	71.51
Cleveland	R. L. Weathers	428,109.35	301,044.00	70.30
Columbus	L. V. Grady	228,820.00	167,222.00	73.08
Craven	Wm. Dunn, Jr	379,831.66	310,610.00	81.77
Cumberland	E. L. Hall	414,122.03	270,615.00	65.35
Currituck	P. G. Sawyer and M. B. Simpson	108,781.86	72,210.32	66.37
Dare		.....	.....	....
Davidson	W. H. Phillips	478,760.00	258,653.00	54.02
Davie	J. S. Daniel	35,438.00	28,308.00	79.88
Duplin	H. L. Stevens	87,165.00	62,250.00	71.41
Durham	M. G. Markham	492,250.00	336,532.00	68.40
Edgecombe	J. L. Bridgers	209,382.24	133,055.00	63.00

Affidavit of C. J. O'Brien.—Continued.

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Forsyth	Phillip L. Kainer..... R. G. Parker..... C. A. Vogler.....	2,139,311.57	1,526,368.70	71.34
Franklin	Hugh W. Perry.....	75,458.29	43,472.00	57.60
Gaston	Cecil C. Cornwell.....	202,167.00	136,974.00	67.70
Gates	P. L. Hoffler.....	133,575.00	84,760.00	63.45
Graham	A. H. Eller.....	39,904.50	17,486.00	43.82
Granville	C. G. Powell.....	272,387.87	141,930.00	52.10
Greene	.....	.....	.....	....
Guilford	John H. McAdoo.....	2,337,104.00	1,627,041.00	69.61
Halifax	R. C. Dunn.....	237,303.50	125,777.50	54.69
Harnett	J. C. Clifford.....	116,685.00	70,045.00	60.03
Haywood	T. Troy Wyche.....	221,720.83	129,342.00	58.33
Henderson	Mrs. J. E. Bishop.....	678,562.05	591,194.05	87.12
180 Hertford	J. E. Vann.....	100,226.00	67,268.00	67.12
Hoke	Oscar Leach	24,042.25	22,325.00	92.85
Hyde	Elmo Mann	84,712.50	60,905.00	71.90
Iredell	John L. Millholland.....	224,435.00	155,250.00	69.17
Jackson	Raymond R. Nicholson...	190,967.00	44,125.00	23.10
Johnston	E. F. Ward.....	382,507.56	224,047.25	58.57
Jones	John R. Barker.....	204,486.00	117,763.00	57.58
Lee	D. E. McIver.....	90,027.00	74,457.00	82.70
Lenoir	C. W. Pridgen.....	212,579.06	191,465.00	90.06
Lincoln	John E. Hoover.....	217,764.00	111,146.00	52.40

Macon	J. F. Ray	32,275.00	19,775.00	61.26
Madison	J. Will Roberts	29,780.00	18,327.00	61.54
Martin	H. W. Stubbs	623,064.03	238,679.00	38.31
McDowell	H. R. Ledbetter	93,675.00	54,480.00	58.16
Mecklenburg	Geo. M. Phifer	3,169,115.25	1,815,279.50	57.28
Mitchell	J. D. Pannell	93,991.00	65,056.00	69.21
Montgomery	W. L. Wright	244,638.00	158,764.00	64.89
Moore	N. A. McKeithen	210,678.00	119,410.00	56.70
Nash	J. P. Bunn	361,740.43	165,891.00	45.85
New Hanover	Wm. L. Smith	989,207.00	866,550.00	87.60
Northampton	P. F. Calvert	54,848.00	48,620.00	88.64
Onslow	Frank Thompson	82,418.00	75,475.00	91.46
Orange	J. F. McAdams	162,269.00	120,706.00	74.38
Pamlico	G. V. Rawls	41,150.00	15,556.00	37.80
Pasquotank	P. G. Sawyer and M. B. Simpson	188,681.15	126,778.00	67.14
Pender	J. T. Bland	90,000.00	64,885.00	72.90
Perquimans	W. F. C. Edwards	95,002.00	87,775.00	92.39
Person	A. P. Clayton	59,124.00	45,570.00	77.07
Pitt	C. F. Manning — J. C. Gaskins	459,976.50	383,157.00	83.00
Polk	W. C. Hague	40,743.20	28,929.00	71.00
Randolph	John M. Brittian	235,365.00	135,150.00	57.42
Richmond	H. V. Guthrie	80,070.00	55,610.00	69.40
Robeson	Wade Wishart	119,272.00	68,004.00	57.00
Rockingham	Nurna Winstead	815,821.00	524,584.00	64.30
Rowan	Max L. Barker	179,097.90	130,391.75	65.52
Rutherford	M. T. Wilkie	106,706.93	79,672.00	74.70
Sampson	H. A. Grady	222,556.00	110,837.00	49.80
Scotland	T. J. Dunn	61,200.00	39,561.00	64.64

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Stanly	George P. Palmer	151,374.00	119,256.00	78.78
Stokes	N. Earl Wall	169,465.00	100,339.00	59.20
Surry	B. F. Folger	198,624.00	108,860.00	54.80
Swain	D. E. Nichols	55,435.00	40,374.00	72.83
Transylvania	Roland Owen	39,950.00	24,870.00	62.25
Tyrrell	A. Melson	48,603.33	34,232.00	70.41
Union	M. L. Flow	473,906.00	331,924.00	70.00
Vance	Robert G. Kittrell	500,066.00	307,311.00	61.50
Wake	H. E. Glenn	810,175.00	716,648.00	88.45
Warren	E. C. Price	131,427.33	69,200.00	52.60
Washington	Z. V. Norman	112,102.50	58,230.50	51.95
Watauga	T. E. Bingham	207,632.00	133,018.00	64.07
Wayne	D. E. Grantham	244,675.00	87,851.00	35.91
Wilkes	Frances Hendren	113,512.40	66,214.00	58.33
Wilson	R. L. Brinkley	304,964.00	191,107.00	63.44
Yadkin	John D. Reece	71,495.00	48,128.50	67.31
Yancey	C. C. Caraway	194,974.00	173,972.00	89.22
Total		$30,598,475.24	$20,373,684.04	66.58

C. J. O'BRIEN.

Subscribed and sworn to before me, this 24th day of January, 1922.
[SEAL.]

R. L. BLAYLOCK,
Clerk U. S. Court.

182 *Affidavit of Members of Former Tax Commission of N. C.*

Filed Jan. 24th, 1922.

STATE OF NORTH CAROLINA,
Wake County:

W. T. Lee, George P. Pell and A. J. Maxwell make this statement under oath.

That in the years 1919 and 1920 W. T. Lee, George P. Pell and A. J. Maxwell were members of and constituted the State Tax Commission, W. T. Lee being Chairman of the State Tax Commission, and had and exercised the duties and responsibilities conferred upon them by Chapter — of the Public Laws of 1919 and by Chapter 84 of the Public Laws of 1919, and as the State Tax Commission exercised the powers and duties of a Board of Appraisers of all properties, located within the State of North Carolina, of all railroad companies (excepting certain incidental properties of such companies assessed by local authorities) and also had and exercised supervision of the valuation of all real property of every kind and of the listing and valuation of all personal property of every kind in all counties of the State. In the supervision of the listing and valuation of such properties by local assessing officers, under the laws hereinbefore referred to, it was the purpose to have all lands listed and valued equally at the true value of such lands, and assessing officers were required to ascertain the actual sales value of lands, where there had been a recent sale, and to use the information thus obtained, as well as all other information obtainable, in finding the actual true value of such lands on the first day of May, 1919, and in estimating the value of other similar lands, in cases where there had been no recent sales, and that as to industrial plants of all kinds and the tracks, structures, buildings and equipment of railroad companies—properties which had not been subject to unit sales as a whole and the value of which could not therefore be determined with relation to an actual sale of such properties—it was the purpose to require, and the State Tax Commission did in so far as it could reasonably do so, require the owners of industrial plants and railroad companies, to furnish information on forms prepared by experienced persons employed by the State Tax Commission,

183 complete detailed information, under authority of section thirty-one of Chapter 85 of the Public laws of 1919, of the cost of reproduction of such industrial plants on the price level of May 1, 1919, and as to railroads the cost of reproduction of the properties of such companies new (on May 1, 1919), including side tracks, double tracks, and all properties owned by such companies in this State, less reasonable depreciation for such of its properties as had depreciated in value, and also information as to capital stock, bonds and other indebtedness, earnings, and so on.

The Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk Southern Railroad Company, in response to demands made

upon them for specific and detailed information as to the cost of reproduction of the properties in this State of each of these companies, did file with the State Tax Commission certain sets of figures, now on file with the Commissioner of Revenue, but did not pretend that such figures even approximated the cost of reproduction of the properties owned by these companies, or either of them, in this State, in the year 1919, but, on the other hand, insisted that it would not be possible for them to furnish this information at any reasonable cost or at any cost within a period of several years. The State Tax Commission, therefore, did not have the benefit of this specific detailed information with respect to the value of the particular properties in this State of these several railroad companies which it did have with respect to, and used in, the valuation of properties of industrial enterprises within the State, and of necessity had to form its valuation of the properties of these companies without having this information and by making the best use that it could of other information furnished by these companies and information on file with and in the records of the North Carolina Corporation Commission.

One of the evidences of value submitted for consideration, by each of these companies was what is technically known as "investment accounts" of these companies, not within the State of North Carolina, but throughout the entire system of railroads owned
184 by them in many states other than North Carolina; and it was insisted by them that the proportion of their total investment account which their main line mileage within the State of North Carolina bore to the total main line mileage of each of these several railway systems throughout the several states in which they operated would give a fair value of the property of such companies within the State of North Carolina, except that it was insisted that they had larger and more expensive terminal facilities outside the State of North Carolina than they had at any one point within the State of North Carolina, and that for this reason the straight mileage proportion of their investment account would be more than a fair proportion for this State.

The State Tax Commission was not able to agree with them that this method would fairly determine the value of their properties within the State of North Carolina, for that, first, their investment accounts represented investments made in the properties going back through a long period of years to their original organizations, and such investments having been in a large part made in years when the general price level of materials, commodities and labor was very much lower as during the year 1914 than the price level for materials, commodities and labor was on May first 1919 and 1920; and for that, second, a straight mileage proportion of their lines did not, in our opinion, accurately or fairly represent the actual value of the properties of either the Southern Railway Company, the Atlantic Coast Line Railroad Company or the Seaboard Air Line Railway Company within the State of North Carolina, the lines of these companies within North Carolina having a much greater value than an average based upon the mileage for their entire systems, in that

they have a larger proportion of double track main line mileage in North Carolina than for their entire systems, and in that both the gross and net earnings of each of these railway lines within the State of North Carolina is much greater than the average gross and net earnings per mile for their entire system. All of this was duly considered by the Commission in proportioning, dividing,
185 and determining the valuation of the property of the said railroads in North Carolina as provided by law.

For the years 1918, the last calendar year prior to the first day of May 1919, the excess net earnings per mile within the State of North Carolina of each of these railway companies in excess of the net earnings per mile for their entire systems, stated in percentages as shown by their reports on file with the Corporation Commission, was as follows:

Southern Railway Company	50.48
Atlantic Coast Line Railroad Company	19.75
Seaboard Air Line Railway Company	250.01

A satisfactory estimate of value could not be made based upon the market value of the stocks and bonds of these companies on the first day of May 1919, for the reason that the limited market and the limited number of shares and bonds sold on the market did not furnish, in our judgment, a fair index of the actual value of these properties as a whole, and more particularly did not furnish an index of the actual value of the properties of these companies located within the State of North Carolina for the reason hereinbefore stated; nor was it considered that the actual value of these properties could be fairly determined by their earnings, until there should be a fair return to normal conditions of operating costs, flow of traffic and stabilization of transportation rates.

For the reasons hereinabove set out the valuation finally made or determined by the State Tax Commission of the properties of eacl. of these railway companies within the State of North Carolina as of the first day of May 1919 was not made with the sole and exclusive relation to any one element or indicia of value, but after due and proper consideration of all of them and upon the best knowledge and information obtainable by the Commission.

186 The members of the Commission have for years been actively engaged in the matters of valuation for rate making and taxation purposes in North Carolina and are acquainted with property values of railroads in the State and in assessing the properties of the plaintiffs the Commission gave due consideration to all factors and methods prescribed by the law governing such valuations and the values of said properties as fixed and determined by the Commission are, in the opinion of affiants, fair, just and reasonable matters within their personal knowledge and to their personal information as to property values and particularly railroad property values in North Carolina.

As to the properties of the Southern Railway Company in the State of North Carolina, a valuation of $111,308,325 was made,

which was in fact the proportion of the investment account of the Southern Railway Company which the gross earnings of that company within the State of North Carolina bore to the total gross earnings of the Southern Railway Company for the year —. Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960,416, which was in fact the amount which the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis or theory of six per cent, would have produced.

In general the same method was followed in fixing the valuation of the total properties in the State of the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railroad Company, and the Norfolk and Southern Railroad Company. In each case the basic consideration was the cost of reproduction value, less depreciation, which, in the absence of correct reports of such values by the Railroads as they were required by law to furnish and which were duly called for by the Commission, was arrived at as accurately as possible by a consideration of the investment account. In each case a tentative cost of reproduction value was found in this way which, except in the case of the Norfolk and Southern, was in excess of the assessment as finally arrived at. In the case of the Norfolk and Southern this investment account, or cost of reproduction, value was the same as the final assessment and that railroad made no
187 application to the Commission for rehearing on that assessment and took no exception thereto. In the case of the other railroads, a consideration of capitalization of net income and of the other factors which the Tax Commission was authorized by law to consider led to the reduction of this investment account, or cost of reproduction, value to the valuation fixed as the final assessment.

After the assessments of the properties of the plaintiffs had been arrived at by the Tax Commission pursuant to the Revaluation Act (Public Laws of 1919, Chapter 84) the Commission, as required by law, made report of its action and valuation to the General Assembly of North Carolina and thereupon, in the special session of 1920 the General Assembly, by Chapter 1, Public Laws, Extra Session 1920, specifically approved said valuations as correct and adopted them as and declared them to be the basis for taxation for the years 1920-1923 inclusive, except as such valuations should be thereafter changed according to law. And the affiants are informed and believe and so aver that the said valuations, so made by the Commission and reported to the General Assembly and approved and adopted by it, have remained and still are the basis for taxation of the said railroads in North Carolina except in so far as they have been modified or changed by the Commissioner of Revenue upon application made to him by the said railroads for review as provided by law.

As to the tentative values of the engineers of the Interstate Commerce Commission, referred to by the plaintiffs in these suits as being proper indices of the correct valuation of their total properties in North Carolina, the said tentative values were arrived at upon the basis of an inventory of the railroads' properties as of the date of

June 30, 1914. The affiants state of their own knowledge that the said prices prevailing in 1914 as to material, labor, and all costs of railroad construction, were abnormally low, that since that time such prices have greatly increased, and that in 1919 and in 1920
188 the said prices of labor, materials, and all things going into the Construction of railroads were twice, if not much more than twice, as high as those of 1914 upon which the said tentative figures of the Interstate Commerce Commission were based. In the opinion of the affiants the said tentative figures in no way furnish a proper index or test of the value of the properties of railroads in North Carolina in 1919 and 1920.

It was the purpose of the State Tax Commission in valuing the property of transportation companies and other companies exercising the right of eminent domain, and in the supervision of the valuation of all other property by local assessing officers, to carry out and to have carried out what the State Tax Commission understood to be the general purpose of chapter 84 of the Public Laws of 1919, that all property of every class should be fairly and equally valued at its actual market value, and in evidence that no injustice was done to the Southern Railway Company, the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railroad Company there is attached hereto a copy of the report of the State Tax Commission to the Special Session of the General Assembly of 1920, showing, by comparison, the valuation of 1920 compared with the former valuation of each of the several different classes of properties within the State of North Carolina and showing that the increase in valuation of all railroad property within the State of North Carolina was 99 per cent; of real property 296 per cent; and of all property of all classes within the State 194 per cent.

W. T. LEE.
A. J. MAXWELL.
GEO. P. PELL.

Sworn to and subscribed before me this 21 day of January, 1922.

W. H. PITTMAN,
Notary Public.

My commission expires July 29, 1922.

189 Copy.

Motion to Amend and Order Denying Same.

Filed Jan. 24, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

Motion to Amend.

Comes now the complainant and moves the Court for leave to amend its bill in accordance with the amendment hereto attached a copy of which has been served upon counsel for the defendants.

Dated January 24th, 1922.

THOMAS W. DAVIS,
P. A. WILLCOX,
Solicitor for Complainant.

Order Denying Motion to Amend.

The foregoing motion of complainant to amend its bills in this cause came on by consent of all parties to be heard by Circuit Judge Waddill and District Judges James E. Boyd and Henry G. Connor, the Court convened under Section 266 of the Judicial Code of the United States for the hearing of complainant's application for an interlocutory injunction, and the Court, having duly considered the said motion and being of the opinion that said amendment should not be allowed.

It is ordered and decreed that complainant's motion to amend be and it is denied.

EDMUND WADDILL, JR.,
Circuit Judge.
JAMES E. BOYD,
District Judge.
H. G. CONNOR,
District Judge.

190 *Amendment to Bill of Complaint.*

Filed Jan. 24, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina et al.

Amendment to Bill of Complaint.

Filed Jan. 24, 1922.

The Atlantic Coast Line Railroad Company by leave of court first had and obtained amends its bill of complaint filed herein by adding the following sections:

32½. Complaint alleges upon information and belief that in the year 1919 real estate in the thirty (30) counties in North Carolina in which complainant operates its line of railroad was assessed at $164,960,110, whereas the true value of such real estate as shown by the assessment of 1920 under the Revaluation Act was $707,216,601, showing a ratio of assessed to true value of 23.33 per cent.; that the property of complainant was assessed in 1919 at $34,645,345, and under the Revaluation Act in 1920 at $50,867,800, showing a ratio of 68.10 per cent; that this discrimination which existed in 1919, and for many years prior thereto, and which still exists, resulted from a systematic and intentional undervaluation of real property with the design to discriminate against complainant and to cast upon complainant an undue share of the burden of
191 taxation and for the purpose of relieving real property of its just proportion of taxation.

That by the Revaluation Act of 1920, and the re-assessment made thereunder, an effort was made to assess all property in the State at its true value, and as a result of such re-assessment, the real property in the counties in which complainant operates its line of railroad was increased from $164,960,110 to $707,216,601, and under such re-assessment complainant's property was increased from $34,645,345 to $50,867,800.

That the legislature of North Carolina by the enactment of Section 28 (*a*) of the Machinery Act of 1921, quoted herein, authorized the County Boards of Commissioners and County Boards of Appraisers and Review to determine if the valuation of real estate in the counties as a whole, as made under the Revaluation Act, was in excess of the

fair value of such property, and authorized a horizontal reduction to the extent the said Boards should find the assessed value to exceed the fair value, and acting under said section of the Machinery Act of 1921 the said Boards made horizontal reductions in the value of real estate as heretofore set forth in this section of the bill of complaint in the counties through which the complainant operates its line of railroad.

That the result of said act of the legislature as carried out by the said Boards has been to intentionally and systematically discriminate against complainant in that by the reductions made in real property the ratio of assessed to true value has been reduced until, as complainant is informed and believes and alleges, the average ratio of assessed value to true value of real estate in the counties through which complainant operates its line of railroad is 65.61 per cent., and throughout the state is 66.58 per cent, whereas the property of complainant in said counties is assessed at more than 100 per cent of its true value within the meaning of the tax laws of the State of North Carolina.

192

That the undervaluation of real property in North Carolina, other than the property of railroads, prior to and since the enactment of the Revaluation Act and Section 28 (*a*) of the Machinery Act of 1921, has been systematic and intentional with the design to discriminate against complainant and other railroads and casts upon them an undue share of the burdens of taxation for the purpose of relieving such other property of its just proportion of taxation, and by this systematic and intentional undervaluation of real and personal property the property of complainant has been valued higher than that of individuals and other corporations, and complainant avers that such discrimination is in contravention of Article 5, Section 3, of the Constitution of North Carolina and of the Fourteenth Amendment to the Constitution of the United States.

193 37½. Complainant shows that Schedule D of the Revenue Act of 1921, known as the Income Tax, is unconstitutional and void for the following reasons:

(*a*) For that it is not a tax on income, but is in truth and in fact a tax upon operating income derived by railroad companies from interstate and intrastate commerce, and for the reason that from the operating revenue arrived at under the said law there are not allowed many of the deductions required by the Standard Classification of Accounts of the Interstate Commerce Commission, which Standard Classification of Accounts was promulgated by the said Interstate Commerce Commission under the provisions of the Interstate Commerce Act passed by Congress, and which are so regulated as to ascertain what is the net income of railroads engaged in interstate commerce. Complainant says that among other items which are directed to be deducted by railroads in interstate commerce from operating income, in order to arrive at net income, are the following:

Rent from leased roads,
Joint facility rents,

Miscellaneous rents,
Separately operated properties—loss,
Interest on unfunded debt,
Income transferred to other companies,
Miscellaneous income charges, and
Interest on funded debt.

and avers that in order to ascertain the net income of railroad companies engaged in business in interstate commerce, as complainant is, according to said Standard Classification of Accounts of
194 the Interstate Commerce Commission, promulgated as aforesaid, it is necessary to deduct the above items.

(*b*) The method or arriving at net income stated in the foregoing paragraph is not net income as the same is defined and arrived at under the Standard Classification of Accounts of the Interstate Commerce Commission, in that the Standard Classification of Accounts directs that there shall be deducted from the net operating income not only the deductions provided for in said law of North Carolina, but in addition thereto the following:

Rent from leased roads,
Joint facility rents,
Miscellaneous rents,
Separately operated properties, loss,
Interest on unfunded debt,
Income transferred to other companies,
Miscellaneous income charges, and
Interest on funded debt.

The result is that the machinery provided for by the said statute for the ascertainment of net income does not in truth and in fact produce net income, which under Section 101 it is declared to be the purpose of the said Act to tax. Furthermore, the method outlined in said law for arriving at net income produces a figure which is not in truth net income, but which contains in part gross income, and insofar as it does include gross income, which gross is derived from interstate commerce, said tax is a direct burden upon interstate commerce and is void under the Commerce Clause of the Constitution of the United States.

195 (*c*) Complainant further says that the said statute is unconstitutional and void for that it permits corporations, other than the corporations named in Section 202, to deduct:

"1. All the ordinary and necessary expenses paid during the income year in carrying on any trade or business, including:

"(*a*) As to individuals, wages of employees for services actually rendered in producing such income.

"(*b*) As to partnerships, wages of employees and a reasonable allowance for copartners or members of a firm, for services actually

rendered in producing such income, the amount of such salary allowance to be included in the personal return of the copartner receiving same.

"(c) As to corporations, wages of employees and salaries of officers, if reasonable in amount, for services actually rendered in producing such income.

"2. Rentals or other payments required to be made as a condition of the continued used or possession for the purposes of the trade of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

"3. All interest paid during the income year on indebtedness except interest on obligations contracted for the purchase of nontaxable securities. Dividends on preferred stock shall not be deducted as interest.

"4. Taxes for the income year, except taxes on income and war profits, and excess profits taxes, inheritance taxes, and taxes assessed for local benefit of a kind tending to increase the value of the property assessed.

"5. Dividends from stock in any corporation the net income of which shall have been assessed and the tax on such income paid by the corporation under the provisions of this act: Provided, that when only part of the income of any corporation shall have been assessed under this act only a corresponding part of the dividends received therefrom shall be deducted.

196 "6. Losses sustained during the income year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit.

"7. Debts ascertained to be worthless and charged off within the income year, if the amount has previously been included in gross income in a return under this act.

"8. A reasonable allowance for the depreciation and obsolescence of property used in the trade or business; and, in the case of mines, oil, and gas wells, other natural deposits, and timber, a reasonable allowance for depletion: Provided, that in computing the deductions allowed under this paragraph, the basis shall be the cost (including in the case of mines, oil, and gas wells, and other natural deposits, the cost of development, not otherwise deducted), and in the case of property acquired prior to January 1, 1921, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date. The reasonable allowances under this paragraph shall be made under rules and regulations to be prescribed by the Tax Commission. In the case of leases the deductions allowed may be equitably apportioned between the lessor and the lessee.

"9. In the case of taxpayers who keep regular books of account, upon an accrual basis and in accordance with standard accounting practice, reserves for bad debts and for contingent liabilities, under such rules and restrictions as the Tax Commission may impose. If the Tax Commission shall at any time deem the reserve excessive in amount it may restore such excess to income, either in a subsequent year or as a part of the income of the income year and assess it accordingly.

"10. Contributions or gifts made within the taxable year to corporations or associations operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the tax payer's net income as computed without the benefit of this subdivision.

197 "11. Resident individuals having an established business in another State, or investment in property in another State, may deduct the net income from such business or investment, if such business or investment is in a State that levies a tax upon such net income. The deductions authorized in this subsection shall in no case extend to any part of income of resident individuals from personal services, or mortgages, stocks, bonds, securities and deposits

"12. In the case of a nonresident individual, the deductions allowed in this section shall be allowed only if, and to the extent that, they are connected with income arising from sources within the State; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the State shall be determined under rules and regulations prescribed by the State Tax Commission."

Thus it is a discrimination in favor of corporations and individuals against railroad companies in making deductions in order to ascertain net income, in violation of the Constitution of North Carolina and the Constitution of the United States.

(*d*) Complainant further says that the statute is violative of Article 5, Section 3, of the Constitution of North Carolina, for that it does not levy upon railroads and other public service corporations named in said Section 202, a tax on net income, but levies a tax upon operating revenue derived from interstate and intrastate commerce and does not permit the deductions necessary and incidental to the business of complainant and expended by it from said income in order to determine net income, and is in violation of the Com-
198 merce Clause of the Constitution of the United States in that it permits a tax as an income tax to be placed on gross income derived from interstate commerce, thereby burdening interstate commerce.

(e) That said so-called Income Tax Law violates the Transportation Act of Congress and the Interstate Commerce Act in that it seeks to prescribe a method of accounting by this interstate carrier, when said acts of Congress have delegated the power to prescribe said accounting to the Interstate Commerce Commission, and the said Commission has prescribed and directed that this complainant and other interstate carriers keep their accounts in accordance with the methods so prescribed by it.

THOS. W. DAVIS,
P. A. WILLCOX,
Solicitors for Complainant.

STATE OF NORTH CAROLINA,
County of Guilford:

Charles J. Joseph, being duly sworn deposes and says:

That complainant, Atlantic Coast Line Railroad Company, is a corporation, and that he is one of its officers, to-wit: Tax Agent; that he has read the foregoing amendment to the bill of complaint, and knows the contents thereof, that the same is true of his own knowledge, except as to those matters therein set forth on information and belief, and as to those matters he believes it to be true.

CHAS. J. JOSEPH. [L. S.]

Sworn to and subscribed before me, this 24 day of January, 1922.

R. L. BLAYLOCK,
Clerk,
By H. W. CAUSEY,
D. C.

199 *Additional Affidavit of Charles F. Joseph.*

Filed Jan. 28, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al., Defendants.

Additional Affidavit of Charles J. Joseph.

Charles J. Joseph, being first duly sworn, deposes and says:

1. That he is Tax Agent of the Atlantic Coast Line Railroad Company, and has heretofore filed an affidavit in this cause.

2. That he has read the affidavit filed herein by Hon. W. T. Lee, Hon. A. J. Maxwell and Hon. George P. Pell, former members of the North Carolina State Tax Commission, and, among other
200 things in said affidavit, affiants state that excess net earnings per mile within the State of North Carolina of the Atlantic Coast Line Railroad Company, complainant herein, in excess of the net earnings per mile, for the year 1918, for its entire system, was 19.75 per cent.

3. Affiant admits that the percentage for the said year was 19.75 but for the year 1920 it was only 4.33 per cent., showing a large decrease from 1918 and 1919.

4. Affiant further says, in reference to said affidavit, in which the former State Tax Commissioners state as follows:

"Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960,416, which was in fact the amount from the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis of theory of six per cent. would have produced.

"In general the same method was followed in fixing the valuation of the total properties in the State of the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railroad Company, and the Norfolk and Southern Railroad Company."

that if the above basis was applied, which affiant denies, and which by the facts and figures set forth in the affidavit is shown is not a fact, to the Atlantic Coast Line Railroad Company for the five years from 1915 to 1919, inclusive, its average net operating revenue, less taxes, in the State of North Carolina, being $2,711,847.58,
201 capitalized at six per cent., would show a total valuation of $45,197,459.00. If, however, said average operating revenue, less taxes, of the entire system, of said railroad, for the said five years, inclusive, which was $10,206,453.16, was capitalized at six per cent., the result would be $170,107,252.00, which, distributed to North Carolina on average gross earning basis, amounting to 26.712 per cent., would make a valuation of $45,439,049, and, if allocated to North Carolina, as required by the statute, on operated mileage basis, this amounting to 21.834 per cent., would produce a valuation of $37,141,217.00

5. Affiant further says, in reference to that portion of said affidavit in which the said former State Tax Commissioners state that the lines of the Atlantic Coast Line Railroad Company have a much greater value than average based upon mileage for the entire system in that they have a larger proportion of double track main line mileage in North Carolina than for their entire system, and that both its gross and net earnings in North Carolina are much greater than the average gross and net earnings per mile for their entire system. that the Atlantic Coast Line Railroad Company has a larger proportion of branch line mileage in North Carolina than

for the entire system, and that the proportion of branch line mileage to the entire system in North Carolina is 39 per cent while the proportion of double track mileage is only 14.2 per cent and that the earnings from said branch mileage are relatively much lower than the earnings upon the double track mileage, and that the value of investment in said branch line mileage is greatly
202 less than the value of the investment in double track mileage, and more than offsets such increased proportion of double track mileage in North Carolina.

6. Affiant further says that the earnings in North Carolina are relatively higher in proportion to the earnings for the entire system on account of the fact that there is a larger proportion of transstate movement through North Carolina which neither begins nor ends in that State, and that, as shown by the affidavit of Mr. H. C. Prince, herein, the charges against these shipments, and against the revenue obtained therein, consists of 54 per cent of all of the freight traffic handled in North Carolina, and that three-fourths of all of the operating revenue allocated to North Carolina is derived from interstate instead of intrastate business, and that in crediting North Carolina the straight mileage pro-rate of revenue on such traffic without any deductions for assembling, terminal or handling charges in connection therewith, and in charging to North Carolina only a ratio of operating expenses applicable to the business of the entire line, results in allocating to North Carolina a net revenue in excess of that which is actually earned within said State.

7. Affiant further says that the Atlantic Coast Line Railroad Company paid to the various counties, cities and towns in the State of North Carolina throughout which it runs, for taxes, for the year 1920, the sum of $353,663.84, of which $307,789.53 was paid to the counties and $45,874.31 to the various cities and towns,
203 and for taxes for the year 1921 it has already paid to the same counties, cities and towns the sum of $446,654.61, of which $393,998.45 was paid to the said counties, and $52,656.16 was paid to the said cities and towns, the same being a total of $92,990.77 which it has paid for taxes for the year 1921 on the valuation of $34,645,345 in excess of the amount which it paid for taxes in the year 1920 on the valuation of $50,867,800, and that affiant will pay on the valuation of $50,867,800, the sum of $627,-067.65 for 1921, which will be an increase of $273,403.81 over and above the taxes for 1920, or an increase for the next three years of $820,211.43.

And further affiant saith not.

CHARLES J. JOSEPH.

Sworn to and subscribed before me this 28th day of January, 1922.

[SEAL.]

R. L. BLAYLOCK,
Clerk,
By H. M. CAUSEY,
D. C.

204 *Opinion of the Court.*

Filed March 21, 1922.

In the District Court of the United States.

In Equity.

SOUTHERN RAILROAD COMPANY, ATLANTIC AND YADKIN RAILWAY Company, Atlantic Coast Line Railroad Company, Seaboard Air-line Railway Company, Norfolk-Southern Railroad Company

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, and Others.

Before Waddill, Circuit Judge, Boyd and Connor, District Judges.

Per Curiam:

Bills were filed in equity by the above named companies, to-wit: The Southern Railroad Company and the Atlantic and Yadkin Railway Company, in the United States District Court for the Western Division of North Carolina and the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk-Southern Railroad Company, in the Eastern District of North Carolina, against the defendants A. D. Watts and A. D. Watts as Commissioner of Revenue, Baxter Durham, Auditor, Benjamin R. Lacy, Treasurer, and James S. Manning, Attorney General of North Carolina, in which, for the causes therein set forth, they and each of them prayed for an interlocutory injunction restraining and enjoining said defendants, in their individual and official capacity from proceeding with the collection and the enforcement of payment against complainants, of certain taxes assessed or about to be assessed against complainants and their property, until the final hearing of said causes for that, among other things alleged in the bills, the statutes of the State of North Carolina under, and pursuant to which, said taxes were assesed and sought to be enforced, were unconstitutional and void. Pursuant to the provisions of Section 266 of the Judicial Code, James E. Boyd, Judge of the Western District, called to his assistance in hearing said motions for interlocutory injunction in said causes, brought in the Western District, Edmund Waddill Jr., Circuit Judge of the Fourth Circuit, and H. G. Connor, Judge of the District Court of the Eastern District of North Carolina, and H. G. Connor, Judge of the East-

ern District, called to his assistance in hearing said motions,
205 brought in the Eastern District, Edmund Waddill, Jr., Circuit Judge of the Fourth Circuit and James E. Boyd, Judge of the District Court of the Western District of North Carolina.

As required by the provisions of the statute, the said district judges in the causes pending in said District made orders in which

they directed the defendants to show cause, at a time and place therein named, why the interlocutory injunctions should not be granted as prayed for.

The motions in said causes were, by consent of complainants and defendants, by their attorneys, heard together, at Greensboro, N. C., on January 4th, 1922, when and where said judges being present said motions were heard upon the bills, answers, affidavits, exhibits and argument of counsel, for all parties in said causes.

The further consideration of the motions was, by consent of the counsel and order of the court, continued to Raleigh, N. C. on March 16, 1922, when and where said judges being present, proceeded to consider said motions upon the pleadings, affidavits, exhibits and briefs filed by counsel.

It appears from the bills and answers that the said motions, and prayer for final relief of complainants, are based upon the following allegations and contentions:

1. That the property of complainants was not assessed in the same manner and by the same method as the property of the individual citizens of the state and that, the manner and methods by which complainants' property is appraised and assessed for taxation operates as an unjust and unlawful discrimination against complainants in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and that, thereby, complainants are deprived of their property without due process of law.

2. That the appraisal and assessment for taxation of the property of complainants are not made in accordance with the provisions of the Constitution and Statutes of the State of North Carolina and that said appraisal and assessment of taxes thereon are invalid.

3. That the appraisal of the value of complainant's property is in excess of its true value, for the purpose of taxation, as provided by the Constitution of North Carolina, and is, therefore, invalid.

206 4. That the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States in the appraisal and assessment of complainants' property are violated, in that, complainants' property, alleged by the State to be assessed at its true value for taxation, the property of other taxpayers in the State, is appraised and assessed for taxation at less than its true value.

5. That the Franchise or Privilege Tax imposed upon complainants is invalid for that:

1. The ad valorem assessment is in excess of its true value for taxation and that the Franchise or Privilege Tax, based thereon, in accordance with the Statutes of the State, violates the Constitution of the United States and the State of North Carolina.

2. The Franchise or Privilege Tax is in truth and fact an ad valorem tax and invalid, because not imposed upon the property of other citizens of the State.

3. That the Statute of North Carolina under, and pursuant to which the Franchise or Privilege Tax is imposed and sought to be enforced imposes a tax upon the privilege of doing business by complainants, both interstate and intrastate and is, therefore, a burden upon interstate commerce and thereby violates the Commerce Clause of the Constitution of the United States.

4. That, if the Franchise, or Privilege Tax, imposed upon complainants be valid, the method of ascertaining the value of complainants' property as a basis for fixing the amount of said Franchise or Privilege Tax includes property of complainants used, as well in interstate as intrastate business and is, therefore, a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

The Court, after consideration of the bills, exhibits, affidavits and argument of counsel, is of the opinion that, for the purpose of this motion only, complainants have neither in their pleadings,
207 nor upon the proofs adduced, made such a case as entitles them to have an interlocutory injunction in said causes as prayed for, and the motions for such interlocutory injunctions in respect to the ad valorem and the Franchise and Privilege Tax should not be granted and said motions and each of them are denied.

The Court is of the opinion that the contentions sought to be made by complainants in regard to the imposition and enforcement of the Income Tax against complainants, as provided by the Constitution of North Carolina, Article 5, Section 3, as amended, and the statutes enacted by the Legislature pursuant thereto and for the enforcement thereof are not presented upon the bills and proofs herein.

The Court, therefore, does not pass upon, or express any opinion in respect to the validity of the Income Tax, or the Statutes enacted for its enforcement. Complainants may, in respect to such income tax, proceed without prejudice in such manner as they may be advised.

Let this opinion and a copy thereof, be filed and an order drawn and signed to be filed in the record in each of said causes in accordance therewith.

The further proceedings in said causes, in the Courts of the District, in which they are pending, will be had as provided by the Judicial Code and the course and practice of said courts. The costs of the motion will abide the final decree in said causes.

At Raleigh, North Carolina.

This the 18th day of March, 1922.

(S.) EDMUND WADDILL, JR.,
United States Circuit Judge, Fourth Judicial Circuit.

(S.) JAS. E. BOYD,
United States District Judge, Western District of North Carolina.

(S.) H. G. CONNOR,
United States District Judge, Eastern District of North Carolina.

135

208 *Order Denying Interlocutory Injunction.*

Filed March 18, 1922.

In the United States District Court for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue, and Others, Defendants.

This cause came on this 18th of March, 1922, before the United States District Court for the Eastern District of North Carolina held by the undersigned three United States judges sitting pursuant to the provision of Section 266 of the Judicial Code to be heard upon a motion for an interlocutory injunction to enjoin and restrain the State of North Carolina from collecting certain taxes enumerated in the complainant's bill which motion was heard and considered upon the pleadings, and affidavits filed respectively by the complainant and the defendants and was argued by counsel, whereupon the court composed of the three judges sitting as aforesaid having filed an opinion denying the right of the complainants to have an interlocutory injunction, it is for reasons stated in writing, in said opinion filed in the cause, and pursuant thereto, adjudged, ordered and decreed That said injunction so prayed for, be and the same is hereby refused and denied.

And it is further ordered that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order, to the end that complainant may take such action in the premises as it is advised to.

(S.) EDMUND WADDILL,
United States Circuit Judge, Fourth Judicial Circuit.

(S.) JAMES E. BOYD,
United States District Judge, Western District of North Carolina.

(S.) H. G. CONNOR,
United States District Judge, Eastern District of North Carolina.

209 *Notice of Application for Appeal & Stay.*

Filed March 30, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

To the defendants in the above-entitled action and Honorable James S. Manning, Attorney General of North Carolina, and Frank Nash, Assistant Attorney General, Solicitors for defendants:

You will please take notice that on Thursday, March 30th, 1922, at 10:00 o'clock A. M., or as soon thereafter as counsel may be heard, the above named complainant will apply to His Honor, Henry G. Connor, District Judge, at office in Wilson, N. C., for an order allowing the complainant to appeal to the Supreme Court of the United States and granting a stay of proceedings until the appeal shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

ATLANTIC COAST LINE RAILROAD COMPANY,
By T. W. DAVIS,
Solicitor.

Filed at Wilson, N. C., March 30, 1922.

H. G. CONNOR,
Dist. Judge.

210 *Assignment of Errors.*

Filed March 30, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue of North Carolina, et al., Defendants.

Now comes the complainant, in the above entitled cause, and in connection with its petition for appeal from the order entered March 18, 1922 (by the court convened under Section 266 of the Judicial Code of the United States), denying the motion for interlocutory injunction, files the following assignments of error:

The Court erred:

(1) In decreeing that the interlocutory injunction be denied.

(2) In holding that for the purpose of the motion for an interlocutory injunction only, complainant neither in its pleadings, nor upon the proof adduced, is entitled to have the interlocutory injunction applied for.

(3) In failing to hold that the assessment of complainant's property for taxation is in excess of its "true value" in money for the purpose of taxation as required by the Constitution of North Carolina and is therefore invalid.

(4) In failing to hold that the appraisal of complainant's property for taxation is not made in accordance with the provisions of the Constitution and Statutes of North Carolina, and that said appraisal and assessment of taxes are invalid and illegal.

211 (5) In failing to hold that the property of complainant was illegally assessed, in that the plan of valuation followed to arrive at the assessment complained of imported into the State of North Carolina values which are elsewhere, and that such plan so followed violates the Commerce Clause of the Constitution of the United States.

(6) In failing to hold that the manner and method by which complainant's property was assessed is illegal and operates as an unjust and unlawful discrimination against complainant in violation of the provisions of the Fourteenth Amendment to the Con-

stitution of the United States, and that thereby complainant is deprived of its property without due process of law and denied the equal protection of the law.

(7) In failing to hold that the action of the Commissioner of Revenue, in declining to make a reduction in the value of complainant's property commensurate with the horizontal reductions made by the taxing authorities under the North Carolina law permitting such reductions on other property generally, was unjust discrimination, contrary to the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States.

(8) In failing to hold that the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States are violated, in that complainant's property is alleged by the State to be assessed at its true value for taxation, while the property of other taxpayers generally in the State is appraised and assessed for taxation at less than its true
212 value in money and that this appraisal and assessment of the property of other citizens and taxpayers of the State has been long continued and is arrived at under a scheme of taxation which shows intent to place an undue burden of taxation upon complainant and its property.

(9) In failing to hold that the scheme of taxation of the State of North Carolina and the assessment of the properties of the various classes of taxpayers is by a settled purpose and intent so designed and carried out that, while the property of complainant is assessed at its true value in money, or more than its true value in money, the large proportion of the property in the State is assessed at less than its true value in money, thereby casting an undue and excessive burden upon complainant, in violation of the Uniformity Clause of the Constitution of the State of North Carolina and in violation of the Fourteenth Amendment to the Constitution of the United States.

(10) In failing to hold that the ad valorem assessment being in excess of true value for taxation, the so-called Franchise tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

(11) In failing to hold that the so-called Franchise or Privilege tax is in truth and in fact an additional ad valorem or property tax upon complainant's property and is illegal and invalid because levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State and the enforcement of such void statute deprives complainant of its property without due process of law contrary to the Constitution of the United States.

213 (12) In failing to hold that the so-called Franchise or Privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in inter and intrastate

commerce and is therefore a burden upon interstate commerce in violation of the Commerce Clause of the Constitution of the United States.

(13) In failing to hold that if the Franchise or Privilege tax be imposed for the privilege of engaging in intrastate commerce, it is measured in part by the value of the privilege of engaging in interstate commerce in that it is based upon the entire value including values derived from use in interstate commerce, and is, therefore, a burden imposed upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(14) In failing to hold that if the so-called Franchise or Privilege tax is imposed for the privilege of engaging in intrastate commerce, the tax should have been assessed against complainant upon one half of the ad valorem value, as provided in Section 82 (3½) of the Revenue Act of North Carolina of 1921, and that the tax assessed against complainant upon the full value of its property is, therefore, contrary to the law and void.

(15) In failing to hold that the payment of the so-called Franchise or Privilege tax is exacted as a condition precedent to the right of complainant to do "any business" in the State, whether interstate or intrastate, and, therefore, unconstitutional and void.

(16) In failing to hold that the assessment made is void,
214 in that it includes in the value used as a basis for arrival at the Franchise or Privilege tax the value of property not used in the business for which the privilege is exacted, and such law and the enforcement thereof, in the manner set forth, violates the Fourteenth Amendment to the Constitution of the United States.

(17) In failing to hold that the tax system of the State of North Carolina, which includes an ad valorem tax on the full value of its property in the State, including as a part thereof value it has due to its use in interstate commerce, plus a Franchise or Privilege tax upon the full value of the said property for ad valorem purposes, plus an income tax of three per cent on its net operating income, does, in practical operation, result in a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

THOS. W. DAVIS,
Solicitor for Complainant.

Filed at Wilson, N. C., March 30, 1922. H. G. Connor, Dist. Judge.

215 *Order Fixing Time for Hearing Application for Appeal and Stay.*

Filed March 31, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

Order.

The plaintiff in the above entitled cause having presented its application for appeal to the Supreme Court from an order of Circuit Judge Waddill, and District Judges Boyd and Connor, dated March 18, 1922, and its application for a stay pending the decision of the Supreme Court upon appeal and counsel for defendants having requested of the Court a continuance.

It is now ordered that this application be continued to be heard before me at Wilson, North Carolina, at Chambers, at 11 o'clock A. M. April 8th, 1922.

That copies of this order be mailed to the Attorney General and his Associate counsel.

This the 30th day of March, 1922.
At Wilson, North Carolina.

H. G. CONNOR,
United States District Judge.

216 *Order Denying Stay.*

Filed April 18, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al., Defendants.

This matter coming on to be heard at Raleigh, North Carolina, on April 15, 1922, on application of complainant for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18, 1922, until the appeal heretofore taken shall have been heard, passed upon and disposed of by the Supreme Court of the United States, and all parties being represented by counsel now before the Court:

The Court, being of the opinion that the application to continue in effect the thirty day stay granted March 18, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this Court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States, denies the application for continuance of said stay until the appeal is decided by the Supreme Court of the United States.

And it appearing to the Court that the hearing of this application has been delayed through no fault of complainant's, and the Court being of the opinion that the status quo should be continued until the application for restraint pending the appeal can be made to and decided by the Supreme Court of the United States, orders that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order.

EDMUND WADDILL, JR.,
U. S. Circuit Judge, Fourth Judicial Circuit.
JAMES E. BOYD,
U. S. District Judge, Western District of North Carolina.
H. G. CONNOR,
U. S. District Judge, Eastern District of North Carolina.

217 *Stipulation of Counsel as to the Record.*

Filed April 15, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al., Defendants.

It is stipulated and agreed by and between the parties to the above entitled cause:

That the Clerk, in making up the transcript of record on this appeal from the Order denying complainant's motion for an interlocutory injunction, shall include all pleadings, orders, motions, stipulations, affidavits, and exhibits, constituting the entire record before the Court, except there may be omitted from the record the following:

(1) The Clerk shall not include as a part of the transcript the individual affidavits of the Registers of Deeds of the 100 Counties in the State of North Carolina, together with the tabulated lists of conveyances recorded from January 1, 1921, to June 30, 1921, and setting forth opposite each conveyance the consideration in the deed and the assessed value for taxation of the property conveyed.

(2) Return of the service of the notice of the hearing on complainant's application for an interlocutory injunction.

(3) Return of the service of the writ upon the various defendants.

218 The Clerk shall include as a part of the transcript four of the said affidavits, to-wit, that of Philip L. Kainer, R. G. Parker and C. A. Vogler, of Forsyth County, and J. P. Bunn, of Nash County, North Carolina, together with the tabulated statement of deeds recorded and the deed value of each parcel conveyed and the assessed value for taxation of each parcel so conveyed, these being typical of all as to the form and character of information contained therein. It is unnecessary to set forth the individual affidavits of deed and tax value taken from the records of each separate County in the State, because the information shown on said separate affidavits, containing the deed value of 7,431 separate conveyances and a comparison of the tax assessment of each said parcel, is summarized in the affidavit of C. J. O'Brien which is to be included in the transcript.

It is further stipulated that the Clerk may use in preparing the record on appeal printed copies of all such pleadings, documents, affidavits, etc., as may be furnished by the parties hereto.

THOS. W. DAVIS,
Solicitor for Complainant.
JAMES S. MANNING,
Solicitor for Defendants,
Attorney General of N. C.

219 *Memorandum of Original Papers Certified Separately.*

Petition for Appeal filed March 30, 1922.
Appeal allowed April 15, 1922.
Appeal Bond dated April 15, 1922; penalty, $1,000.00; Obligors: Atlantic Coast Line Railroad Company and Fidelity & Deposit Company of Baltimore: Conditioned for damages and costs.
Citation dated April 15, 1922; service accepted by James S. Manning, Attorney General of North Carolina, for A. D. Watts, Commissioner of Revenue, and other defendants, April 15, 1922.

220 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Order to Transmit Record.

And thereupon it is ordered by the Court here that a transcript of the record and proceedings in said suit be transmitted to the United States Supreme Court at Washington, D. C., and the same is transmitted accordingly.

S. A. ASHE,
Clerk United States District Court.

221 *Clerk's Certificate.*

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Clerk's Certificate.

I, S. A. Ashe, Clerk, United States District Court, for the Eastern District of North Carolina, do hereby certify that the foregoing pages present a full, true and correct copy of the proceedings had and orders entered in that certain suit in equity pending in said Court, wherein Atlantic Coast Line Railroad Company is complainant and A. D. Watts, Commissioner of Revenue of North Carolina, and others, are defendants.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said District Court at the Courthouse in Raleigh, State of North Carolina, this 5 day of May, 1922.

[Seal of the United States District Court, Eastern Dist. of N. C., at Raleigh.]

S. A. ASHE,
Clerk United States District Court.

222 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al., Defendants.

To the Honorable Henry G. Connor District Judge of the United States for the Eastern District of North Carolina:

The Atlantic Coast Line Railroad Company, the above named Complainant, feeling aggrieved by the Order of the Court, consist-

ing of Circuit Judge Waddill and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code of the United States, entered in the above entitled cause on the 18th day of March, 1922, refusing and denying the interlocutory injunction applied for in this cause to restrain the Defendants, until the cause could be heard on its merits, does, as provided in Section 266 of the Judicial Code of the United States, hereby appeal to the Supreme Court of the United States from the order refusing and denying the interlocutory injunction applied for upon the grounds set forth in the assignments of error filed herewith, and complainant prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said appeal is based, duly authenticated, be sent to the Supreme Court of the United States, under the rules of such Court in such cases made and provided.

And Complainant further prays that the Court enter
223 & 224 an Order continuing in effect the thirty day stay granted by the Court in the Order entered March 18, 1922, until the appeal herein prayed for shall have been heard, passed upon, and disposed of by the Supreme Court of the United States.

ATLANTIC COAST LINE RAILROAD COMPANY,
By THOS. W. DAVIS,
Solicitor.

224½ [Endorsed:] Petition for appeal. I certify that the within is entered and filed this day, Apr. 15, 1922. S. A. Ashe, Clerk.

225 [Endorsed:] #437. Equity. Atlantic Coast Line Railroad vs. A. D. Watts et al. Petition for Appeal. I certify that the within is entered and filed this day, Mar. 30, 1922. S. A. Ashe, clerk.

226 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al., Defendants.

This matter coming on to be heard on the application of complainant for an appeal to the Supreme Court of the United States, under Section 266 of the Judicial Code of the United States, from the decree entered in this cause on the 18th day of March, 1922,

refusing and denying the interlocutory injunction applied for; and upon the assignments of error filed in said cause and presented to the Court with the said application for appeal and for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18th, 1922, until the appeal prayed for shall have been heard, passed upon, and disposed of by the Supreme Court of the United States.

And all parties being represented by counsel now before the Court on due notice.

It is ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the order and decree filed and entered herein on the 18th day of March, 1922, refusing and denying the interlocutory injunction prayed for, upon the giving of bond in the sum of $1,000.00.

It is further ordered that citation of appeal issue and be served upon the defendants or their attorneys of record, and that the Clerk of this Court prepare and forward to the Supreme Court
227 & 228 of the United States a transcript of the record of the proceedings, pleadings, affidavits, etc., upon which the judgment herein was rendered, duly authenticated.

This 15th day of April, 1922.

H. G. CONNOR,
U. S. District Judge,
Eastern District of North Carolina.

229 [Endorsed:] #437. A. C. L. R. R. Co. vs. A. D. Watts. Order granting appeal. I certify that the within is entered and filed this day, Apr. 15, 1922. S. A. Ashe, Clerk.

230 *Appeal Bond.*

Filed 18 Day of April, 1922. S. A. Ashe, Clerk.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D WATTS and A. D. WATTS as Commissioner of Revenue et al., Defendants.

Know all men by these presents: That we, Atlantic Coast Line Railroad Company, a corporation organized and exsting under the laws of the State of Virginia, as principal, and Fidelity & Deposit Company of Baltimore, as surety, are held and firmly bound unto the above named A. D. Watts and the other defendants in the sum

of one thousand dollars, to be paid to the said A. D. Watts and other defendants, their successors and assigns, to which payment, well and truly to be made, we bind ourselves and our successors jointly and severally by these presents.

Sealed with our seals this 15th day of April, 1922.

Whereas, in a suit pending in the District Court of the United States for the Eastern District of North Carolina between Atlantic Coast Line Railroad Company, complainant, and A. D. Watts, et al., defendants, a decree was rendered by the Court consisting of Circuit Judge Waddill and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code, denying complainant an interlocutory injunction as prayed for, and the said Atlantic Coast Line Railroad Company having prayed and been allowed an appeal under Section 266 of the Judicial Code of the United States, direct to the Supreme Court of the United States, and filed a copy thereof in the Clerk's Office of the said Court, and citation having issued directed to the said A. D. Watts, et al., citing and admon-
231 & 232 ishing them to be and appear in the Supreme Court of the United States within the time required by law.

Now, the condition of the above obligation is such, that if the said Atlantic Coast Line Railroad Company shall prosecute its said appeal to effect, and answer all damages and costs if it fails to make its appeal good, then the above obligation shall be void, else to remain in full force and effect.

[Seal of Atlantic Coast Line Railroad Company, Incorporated in Virginia.]

ATLANTIC COAST LINE RAILROAD COMPANY,
By THOS. W. DAVIS,
Solicitor, and
By R. S. CRONBY,
Attorney in Fact.

[Seal of Fidelity & Deposit Company of Maryland, Incorporated 1890.]

FIDELITY & DEPOSIT COMPANY OF BALTIMORE,
By THEODORE S. JAMES,
Attorney in Fact.

Approved this 15th day of April, 1922.

H. G. CONNOR,
United States District Judge.

233 [Endorsed:] #437. Eq. A. C. L. R. R. Co. vs. A. D. Watts et —. Appeal Bond & Order Approving Same. I certify that the within is entered and filed this day Apr. 18, 1922 S. A. Ashe, Clerk.

234 *Citation.*

Filed 15th Day of April, 1922. S. A. Ashe, Clerk.

UNITED STATES OF AMERICA:

The President of the United States to A. D. Watts and A. D. Watts as Commissioner of Revenue et al., Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be holden in the City of Washington, on the 8 day of May, next, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Eastern District of North Carolina, wherein Atlantic Coast Line Railroad Company is complainant, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said complainant in error, as in the said appeal mentioned, should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand in the City of Raleigh, N. C., in the District above named, this 15th day of April, 1922.

H. G. CONNOR,
Judge of the District Court of the United States
for the Eastern District of North Carolina.

Service of within citation accepted for all defendants April 15th, 1922.

A. D. WATTS,
Commissioner of Revenue, and Other Defendants,
By JAMES S. MANNING,
Attorney General of North Carolina.

I certify that the within is entered and filed this day. Apr. 15, 1922.

S. A. ASHE,
Clerk.

235 [Endorsed:] #437. Eq. A. C. L. vs. Watts. Citation. I certify that the within is entered and filed this day. Apr. 18, 1922. S. A. Ashe, clerk.

Endorsed on cover: File No. 28,916. E. North Carolina D. C. U. S. Term No. 961. Atlantic Coast Line Railroad Company, appellant, vs. A. D. Watts and A. D. Watts, as Commissioner of Revenue of the State of North Carolina et al. Filed May 8th, 1922. File No. 28,916.

(28,917)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 962.

NORFOLK SOUTHERN RAILROAD COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE OF THE STATE OF NORTH CAROLINA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

INDEX.

	Original.	Print
Bill of complaint	2	1
Exhibit A—Article V, revenue and taxes	33	19
Exhibits B and C—Statements	34	20
Application for interlocutory injunction	36	23
Order on application for interlocutory injunction	38	24
Notice of hearing of application for interlocutory injunction	39	25
Service of notice of hearing	40	26
Stipulation for service of subpœna	41	27
Subpœna	43	28
Marshal's return on same	44	29
Subpœna	45	29
Marshal's return on same	46	30
Clerk's notation on subpœna to defendants in eastern district	47	30
Clerk's notation on subpœna to defendants in western district	48	31
Order continuing hearing	49	31
Motion to dismiss	50	32

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 25, 1922.

	Original.	Print.
Agreement for hearing at Greensboro	51	33
Stipulation of counsel and interlocutory order	52	34
Answer	54	36
Exhibit A—Comparative statement of taxable values	67	45
Affidavit of F. L. Nicholson	70	51
Charles M. Weeks	72	54
J. C. Nelms, Jr	78	61
C. P. Dugan	83	64
J. C. Nelms, Jr	86	66
J. C. O'Brien	88	67
M. S. Hawkins	92	73
Order for filing affidavit of members of former tax commission	120	90
Affidavit of members of former tax commission of North Carolina	121	91
Opinion *per curiam*	129	96
Order denying interlocutory injunction	134	99
Notice of application for appeal and stay	135	100
Order fixing time for hearing application	136	101
Assignment of errors	137	102
Order denying stay	143	105
Stipulation of counsel as to record	144	106
Additional stipulation as to the record	146	107
Memorandum of original papers certified separately	147	107
Order to transmit record	148	108
Clerk's certificate	149	108
Petition for appeal	150	109
Order allowing appeal	152	110
Bond on appeal	153	111
Citation and service	156	112

1

TRANSCRIPT OF RECORD.

In the District Court of the United States for the Eastern District of North Carolina.

At a District Court of the United States for the Eastern District of North Carolina begun and held at the court house, in the city of Raleigh, on the first Monday of March, being the sixth day of the same month, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable Henry G. Connor, Judge of the District Court for the Eastern District of North Carolina.

Among others were the following proceedings, to-wit:

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, et als.

2

Bill of Complaint.

Filed Oct. 17, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK-SOUTHERN RAILROAD COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Commissioner of Revenue of North Carolina; Baxter Durham, State Auditor of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; J. Bryan Grimes, Secretary of State of North Carolina; James S. Manning, Attorney-General of North Carolina; Frank Nash, Assistant Attorney-General of North Carolina, and Others.

To the honorable the judge of the District Court of the United States for the Eastern District of North Carolina:

3 Norfolk-Southern Railroad Company, a corporation originally created, organized and existing under the laws of the State of Virginia, a citizen and resident of the State of Virginia, brings this its bill against the following named defendants, all of whom are citizens and residents of the State of North Carolina,

and who duly and severally hold and occupy the offices designated as being held by them, the bill being brought against them individually and in their official capacities, to wit:

Augustus D. Watts, Commissioner of Revenue for North Carolina,
Baxter Durham, State Auditor for North Carolina,
Benjamin R. Lacy, State Treasurer for North Carolina,
J. Bryan Grimes, Secretary of State for North Carolina,
James S. Manning, Attorney-General for North Carolina,
Frank Nash, Assistant Attorney General for North Carolina.

The following Sheriffs and Tax Collectors in their official capacities, who are citizens and residents of the Eastern District of North Carolina:

R. E. Flora, Sheriff and Tax Collector of Currituck County,
W. M. Forbes, Sheriff and Tax Collector of Camden County,
Charles Reid, Sheriff and Tax Collector of Pasquotank County,
W. G. Wright, Sheriff and Tax Collector of Perquimans County,
G. W. Goodwin, Sheriff and Tax Collector of Chowan County,
C. M. Lawrence, Sheriff and Tax Collector of Gates County,
4 Jos. E. Reynolds, Sheriff and Tax Collector of Tyrrell County,
J. E. Reid, Sheriff and Tax Collector of Washington County,
Jas. H. Harris, Sheriff and Tax Collector of Beaufort County,
James D. Williams, Sheriff and Tax Collector of Craven County,
W. H. Pickles, Sheriff and Tax Collector of Pamlico County,
J. R. Westbrook, Sheriff and Tax Collector of Jones County,
T. M. Thomas, Jr., Sheriff and Tax Collector of Carteret County,
A. W. Taylor, Sheriff and Tax Collector of Lenoir County,
William D. Grant, Sheriff and Tax Collector of Wayne County,
E. R. Dudley, Sheriff and Tax Collector of Pitt County,
J. E. Herring, Sheriff and Tax Collector of Greene County,
B. E. Howard, Sheriff and Tax Collector of Wilson County,
W. J. Massey, Sheriff and Tax Collector of Johnston County,
J. L. Cornwell, Sheriff and Tax Collector of Nash County,
D. B. Harrison, Sheriff and Tax Collector of Wake County,
J. W. McArtan, Sheriff and Tax Collector of Harnett County,
G. W. Blair, Sheriff and Tax Collector of Chatham County,
5 N. H. McGeachy, Sheriff and Tax Collector of Cumberland County,
L. C. Rosser, Sheriff and Tax Collector of Lee County,
D. A. Blue, Sheriff and Tax Collector of Moore County,
R. L. McDonald, Sheriff and Tax Collector of Richmond County,
G. H. Wood, Tax Collector of the town of Elizabeth City,
T. J. Etheridge, Tax Collector of the town of Edenton,
George Harrison, Tax Collector of the town of Plymouth,
L. L. Chesson, Tax Collector of the town of Roper,
J. R. Meekins, Tax Collector for the town of Washington,
E. S. Smith, Tax Collector for the town of Belhaven,
R. L. Swindell, Tax Collector for the town of Pinetown,
J. P. Whitley, Tax Collector for the town of Pantege,
C. H. Hough, Tax Collector for the town of Columbia,
J. S. Nichols, Tax Collector for the town of Arthur,

J. L. Taylor, Tax Collector for the town of Farmville,
J. O. Duval, Tax Collector for the town of Greenville,
C. E. Swain, Tax Collector for the town of Grimesland,
J. A. Lewis, Tax Collector for the town of Middlesex,
Allison B. Farmer, Tax Collector for the town of Bailey,
6 H. F. Barnes, Tax Collector for the town of Wilson,
W. D. West, Tax Collector for the town of Stantonsburg,
T. B. Eldridge, Tax Collector for the town of Raleigh,
J. R. Boothe, Tax Collector for the town of Fuquay Springs,
Z. E. Broadwell, Tax Collector for the town of Wendell,
E. P. Denton, Tax Collector for the town of Zebulon,
Jos. S. Warrick, Tax Collector for the town of Goldsboro,
W. B. Coleman, Tax Collector for the town of Kinston,
N. L. Lucas, Tax Collector for the town of La Grange,
C. F. Gay, Tax Collector for the town of Fieldsboro,
M. A. Hill, Tax Collector for the town of Beaufort,
M. F. Nelson, Tax Collector for the town of Morehead City,
A. L. Wilson, Tax Collector for the town of Newport,
J. H. Dixon, Tax Collector for the town of Lillington,
Jas. S. McNeill, Tax Collector for the town of Fayetteville,
R. D. Collier, Tax Collector for the town of Linden,
I. H. Beck, Tax Collector for the town of Aberdeen,
W. B. Lambert, Tax Collector for the town of Carthage,
A. D. Spivey, Tax Collector for the town of Ellerbe,
J. H. Harris, Tax Collector for the town of Cove,
W. G. Rouse, Tax Collector for the town of Dover,
7 F. H. Lane, Tax Collector for the town of Newbern,
C. A. Ryman, Tax Collector for the town of Bridgeton,
R. C. Cleese, Tax Collector for the town of Vanceboro,
W. H. Pickles, Tax Collector for the town of Bayboro,
E. F. Luptin, Tax Collector for the town of Stonewall,
L. M. Badham, Tax Collector for the town of Oriental,

And the following Sheriffs and Tax Collectors, in their official capacities, residents and citizens of the Western District of North Carolina:

J. A. Brady, Sheriff and Tax Collector of Randolph County,
G. W. Stuart, Sheriff and Tax Collector of Montgomery County,
J. J. Morton, Sheriff and Tax Collector of Stanly County,
C. L. Spears, Sheriff and Tax Collector of Cabarrus County,
W. O. Cochrane, Sheriff and Tax Collector of Mecklenburg County,
C. H. Rush, Tax Collector for the town of Asheboro,
J. T. Brown, Tax Collector for the town of Seagrove,
G. F. Hunsucker, Tax Collector for the town of Troy,
A. C. Parsons, Tax Collector of the town of Star,
G. B. Maynard, Tax Collector for the town of Mount Gilead,
Clarence Bruton, Tax Collector for the town of Biscoe,
8 A. V. Thomas, Tax Collector for the town of Oakboro,
Joe F. Scarboro, Tax Collector for the town of Norwood,
C. M. Creswell, Tax Collector for the town of Charlotte; and therefore upon complains and says:

(1) Norfolk-Southern Railroad Company is a corporation originally created, organized and exists under and by virtue of the laws of the State of Virginia, and is a citizen and resident of the State of Virginia, authorized by its charter to conduct and carry on the business of a common carrier of freight and passengers by railroad, not only within the State of Virginia, but outside of and beyond its border, and to engage in interstate commerce.

(2) The defendants hereinbefore named are each and every of them citizens and residents of the State of North Carolina, respectively hold the offices as to each hereinbefore designated, respectively reside in the districts of said State hereinbefore designated, and the State Officials have an official residence at the City of Raleigh, in the Eastern District of said State; the other defendants have official residences in their respective counties and towns.

Complainant is advised that no tax collector has been appointed for the towns of Hertford, Winfall, Cander, Creswell, and Chocowinity. As soon as such tax collectors are appointed, complainant will ask that they be made parties hereto.

(3) This is a suit in equity, arising under the constitution and laws of the United States, the benefit and protection of which complainant especially sets up and claims; matters are also involved arising under the constitution and laws of North Carolina,
9 of which matters this Court has jurisdiction by reason of diverse citizenship of the parties, the amount in controversy in this case, exclusive of interest and cost, exceeds the sum and value of Three Thousand Dollars, as will be more specifically hereinafter shown.

(4) The people of the State of North Carolina, in the constitution adopted by them, in their sovereign capacity have set up and established a system of taxation for the support of the State and its various political subdivisions, have limited the powers of the general assembly or legislative department in the manner and extent to which it may impose burdens of taxation upon persons and property within its borders.

So far as material to this controversy, the provisions of the constitution are as set out in Exhibit A hereto and prayed to be taken as a part hereof.

(5) The General Assembly of the State prior to January 1, 1921, adopted a system of quadrennial valuation of lands, and an annual valuation of personal property, for assessing and collecting such taxes as might be legally levied and assessed upon property.

The last quadrennial assessment was made during the year 1920.

The General Assembly, at the biennial session held in 1921, amended the laws relative to the assessment and collection of taxes upon real property.

The manner and method of assessing the value of property, the levying and collecting of taxes upon real and personal property in the State of North Carolina (authorized to be levied and collected

under the constitution of the State) is set out and contained in Chapter 38, Public Laws 1921, being an act entitled, "An Act to Amend Chapter 92 Public Laws 1919 in Relation to the Assessment of Property and the Collection of Taxes," ratified on the eighth day of March, 1921. The whole of said act is referred to and prayed to be taken as a part hereof. The parts of said act deemed to be material to this controversy are sections 14, 26-*a*, 26-*e*, 26-*g*, and 61 to 67-*a*, both inclusive.

(6) Complainant owns a line of railroad extending from the City of Norfolk, in the State of Virginia, to the City of Charlotte, in the State of North Carolina, together with numerous branch lines, leading from said main line, and has under lease for 91 years, 4 months, from the first day of September, 1904, the line of railroad owned by the Atlantic and North Carolina Railroad Company, extending from Goldsboro to Morehead City, in the State of North Carolina, which connects with the line of railroad owned by Complainant at Newbern, North Carolina. One of the conditions of said lease is that complainant shall pay all taxes which may be lawfully and legally levied or assessed against said line of railroad or against said Atlantic and North Carolina Railroad Company, and prior to the first day of March, 1920, had under lease the line of railroad owned by the Carthage and Pinehurst Railroad Company, extending from a connection at Pinehurst with the line of railroad owned by complainant to Carthage, North Carolina, one of the conditions of said lease being that complainant should pay such taxes as might be lawfully and legally assessed against said line of railroad and said company. Complainant has since the expiration of said lease continued to operate said line of railroad upon the same terms and conditions as contained in said lease; since the twenty-seventh day of May, 1920, complainant has had under lease for the term of 99 years, the line of railroad owned by the Durham and South Carolina Railroad Company, extending from a connection with the line of railroad owned by Complainant at Duncan, North Carolina, to Durham, North Carolina, one of the conditions of said lease being that Complainant shall pay such taxes as might be lawfully and legally assessed against the railroad of said Company and against said Company.

(7) All of said lines of railroad constitute what is commonly known as Norfolk-Southern Railroad system, said system consists of 937.926 miles of first main line track and 9.462 miles of second main line track, divided as follows:

	First main line.	Second main line.
Norfolk-Southern, owned	793.407	9.462
Atlantic & North Carolina, leased	95.910	
Carthage & Pinehurst, leased	12.225	
Durham & South Carolina, leased	37.382	
Total	937.926	9.462

Divided between the States of North Carolina and Virginia, as follows:

North Carolina.

	First main line.	Second main line.
Norfolk-Southern, owned	682.128	
Atlantic & North Carolina, leased	95.910	
Carthage & Pinehurst, leased	12.226	
Durham & South Carolina, leased	37.382	
Total	827.647	

Virginia.

	First main line.	Second main line.
Norfolk-Southern, owned	110.279	9.462

Total main line track, first and second..... 947.388 miles

Total main line track in North Carolina..... 87.36%
Total main line in Virginia 12.64%

12 Excluding the Durham and South Carolina, which is assessed separately, there is of the Norfolk-Southern owned lines and the lines leased from Atlantic and North Carolina, and Carthage and Pinehurst, which are listed as one property 87.754 per cent in North Carolina and 12.246 per cent in Virginia.

(8) Complainant, in 1920, duly filed with the State Tax Commission, the body then authorized under the laws of North Carolina to assess and value for taxation the property of railroad companies operating in the State of North Carolina, all information required by the State Tax Commission, to enable it to assess for taxation the property of Complainant, including the property under lease from the Atlantic and North Carolina Railroad Company, and the Carthage and Pinehurst Railroad Company; and the Durham and South Carolina Railroad Company duly filed with the said State Tax Commission all information requested by the State Tax Commission to enable the State Tax Commission to assess for taxation the property of the Durham and South Carolina Railroad Company, now under lease to Complainant. The State Tax Commission undertook to assess for ad valorem taxation all of the property of the Durham and South Carolina Railroad Company, located in North Carolina, all of its tangible and intangible property, including its franchises, and assessed the said property as being of the actual value in money at the sum of $372,300.00.

The State Tax Commission undertook to assess for ad valorem taxation all of the property of Complainant situate in the State of North Carolina, including that held under lease from the Atlantic and North Carolina Railroad Company and the Carthage and Pinehurst Railroad Company, including the tangible and intangible

property and franchises of said Companies, and assessed the
13 said value of all of said property in the State of North Carolina, including the franchises, at the sum of $27,023,462.00, which was largely in excess of the actual value in money.

(9) That by Chapter 40 of the Public Laws of 1920, being an Act entitled, "An Act to Transfer the Power and Duties of the State Tax Commission to the State Department of Revenue," ratified the ninth day of March, 1921, the duties and powers of the State Tax Commission were on and after May 1, 1921, transferred to the State Department of Revenue and the words 'State Tax Commission" wherever used in the revenue laws of the State were to mean, "The Commissioner of Revenue" to be appointed under said Act, who was by said Act authorized to exercise all the powers vested in the State Tax Commission under the Revenue Laws of the State.

Augustus D. Watts was duly appointed and qualified as Commissioner of Revenue and is entitled to exercise the duties and powers of the "State Tax Commission."

(10) Acting under authority contained in Sec. 26 (*g*) of said Chapter 28 of the Public Laws of 1921, Complainant applied to the Commissioner of Revenue (State Tax Commission) for a review of the assessment of the value for taxation of the property of Complainant, including its line of railroad leased from Atlantic and North Carolina Railroad Company, and Carthage and Pinehurst Railroad Company, so that the same might be valued at its actual value in money, as required by the Constitution of the State.

The said Commissioner of Revenue (State Tax Commission) found that the aforesaid property of the Complainant was
14 assessed at too high a value, and reduced the assessed value of said property, including all the tangible and intangible property and franchises of Complainant in the State of North Carolina, including its lessor companies, the Atlantic and North Carolina Railroad Company and the Carthage and Pinehurst Railroad Company, to the sum of $22,840,932.00.

(11) Your Complainant alleges and shows that the said sum of $22,840,932.00 is in excess of the "actual value in money" of said properties, including the franchises of said Complainant and its lessors, Atlantic and North Carolina Railroad Company and Carthage and Pinehurst Railroad Company, and all of their tangible and intangible property, and that the said Commissioner of Revenue (State Tax Commission) has not in assessing the value of said property for taxation observed the plain mandate of the laws of the State of North Carolina.

(12) Prior to January 1, 1921, The Interstate Commerce Commission reported to the State of North Carolina, under the provisions of the Interstate Commerce Act, that the cost of reproduction now, less depreciation of complainant's entire properties, located in the States of Virginia and North Carolina, including the part leased from the Atlantic and North Carolina Railroad and the Carthage and Pinehurst Railroad was $23,249,048.00.

The amount expended by Complainant on said properties since the valuation date, which under the rules of accounting adopted by the Interstate Commerce Commission is chargeable to capital account, after deducting (in accordance with the rules of the Interstate Commerce Commission) depreciation, would make the cost of reproduction now less depreciation of Complainant's said
15 entire properties (brought down to date) $26,028,366.00.

(13) On June 11, 1921, the Interstate Commerce Commission under the provisions of the Interstate Commerce Act, reported to the State of North Carolina, that the final value of complainant's entire common carrier properties, as a going concern, as the term value was used in the Interstate Commerce Act was $24,663,840.00, which includes working capital and supplies amounting to $663,575.00.

If there be added thereto Complainant's new-carrier properties, which the Commission reported to cost less depreciation $438,141.00, the entire value (as that term is used in the Interstate Commerce Act) would be $25,101,981.00.

If it be assumed that all of Complainant's property required to be listed locally, is non-carrier property (which is not a correct assumption) and the assessed value of the locally listed property, to wit: $638,215.00 be added to the valuation reported by the Interstate Commerce Commission it would make the value of complainant's entire property $25,302,055.00.

(14) Complainant attaches hereto a statement marked Exhibit B, showing the amount of stocks, bonds, and other securities of Complainant, and its two said lessor companies, outstanding during the years 1915 to 1920 inclusive, together with the average sale value of such securities during each of said years. The sale value of such securities during the entire year of 1921 is, and has been less than any previous year.

The sale value of complainant's entire properties, including that of its two said lessors, as such property is sold in the open market, not at forced sale, is on the average for six years past $17,-
16 717,000.00, and for the years 1919, 1920, and 1921, much less than that sum.

(15) That the report of the Interstate Commerce Commission, made to the State of North Carolina, as aforesaid, prior to January 1, 1921, showed the relative cost of reproduction now less depreciation of Complainant's said entire properties to be Virginia 18 per cent, North Carolina 82 per cent.

The relative mileage of said properties in said two States, is Virginia 12.246 per cent and North Carolina 87.754 per cent.

(16) Dividing the aforesaid different valuations of said properties between the two States on a mileage pro rate, we have the following results:

Cost of Reproduction now, less depreciation, brought down to date, Sec. 12 of this bill	$26,028,366.00
Portion in North Carolina, 87.734%	22,840,932.00
Portion in Virginia, 12.246%	3,187,434.00
	$26,028,366.00
Value of said properties as reported by Interstate Commerce Commission June 11, 1921	$24,663,840.00
Portion in Virginia, 12.246%	3,020,234.00
Portion in North Carolina, 87.754%	21,643,606.00
	$24,663,840.00

If there be added as non-carrier property, the property in North Carolina locally listed, to wit: $638,215.00, we have in North Carolina, as the entire value, as that term is used in the Interstate Commerce Act, in North Carolina, a value of $22,281,821.00.

Value of said properties as fixed by the public by a sale of bonds and stocks	$17,717,000.00
Portion in Virginia, 12.246%	2,169,624.00
Portion in North Carolina, 87.754%	15,547,376.00
	$17,717,000.00

17 That if the aforesaid different values be divided between the two States on the basis of cost of reproduction now less depreciation as appears from the report of the Interstate Commerce Commission:

(1) Reproduction now less depreciation, brought down to date, report prior to Jan. 1, 1921	$26,028,366.00
18% to Virginia	4,685,106.00
82% to North Carolina	21,343,260.00
	$26,028,366.00
(2) Value as set out in report of June 11, 1921, adding to North Carolina's proportion the property listed locally	$24,663,840.00
18% to Virginia	4,439,491.00
82% to North Carolina	20,224,349.00
	$24,663,840.00

Add to North Carolina percentage $638,215.00 property listed locally we have $20,862,564.00.

(3) Dividing the value placed by the public on said properties, as shown by the sale of the securities on the cost of reproduction basis, we have	$17,717,000.00
Virginia, 18%	3,189,060.00
North Carolina, 82%	14,527,940.00
	$17,717,000.00

(17) Complainant shows that the Commissioner of Revenue (State Tax Commission), valued Complainant's said properties, including the two leased lines as a whole at $26,028,366.00, including the franchises, as required by the provisions of Chapter 38, Public Laws, 1921, and then allocated to North Carolina a mileage pro rate to wit: 87.754 per cent of the whole, and valued Complainant's property in North Carolina, tangible and intangible, including the franchises, as required by said Chapter 38, Public Laws
18 1921, at $22,840,932.00, that being 87.754 per cent of $26,023,366.00.

(18) The Commissioner of Revenue (State Tax Commission) under Chapter 38 Public Laws 1921 (Machinery Act) has certified to the various Counties, Cities, Towns, and local taxing districts, where Complainant's property is located, their respective proportionate part of the values so assessed by him, so that the said counties, cities, towns, and local taxing districts might levy and collect an ad valorem tax on said property as authorized by the Constitution and statutes of the State.

From the best information now obtainable, the ad valorem taxes which have been assessed against Complainant's property by the counties, cities, towns, and local taxing districts, will equal, if not exceed 1.50 per cent upon the whole, and Complainant, upon said properties, will be required to pay as a property tax to the counties, cities, and towns, not less than $275,000.00.

(19) That while complainant's said properties are valued at more than their actual value in money, the property of other property owners in the State of North Carolina, and in the several counties, cities, towns, and local taxing districts is under the law and the practice of the local assessors, and the State Board of Equalization, of which the Commissioner of Revenue is a member, is valued at either its actual value in money, or at less than its actual value in money. That the result of the failure of the Commissioner of Revenue to observe the plain mandate of the Constitution and statutes in the valuation of complainant's property is to unjustly and illegally discriminate against complainant, all in viola-
19 tion of the Constitution of the State, and in violation of the fifteenth Amendment to the Constitution of the United States.

Complainant further shows that many of the Counties, Cities, Towns, and Local Taxing Districts have in violation of the Constitution of the State, undertaken to levy and assess against complainant, illegal and excessive levies, on the illegal and excessive valuations so made. That unless the said illegal and excessive valuation be corrected, complainant will be compelled to pay many illegal and excessive taxes. That neither the tax collectors, nor the several taxing districts have any power to remedy the assessment made by the Commissioner of Revenue to change the same. That unless the several sheriffs and tax collectors be enjoined and restrained from collecting said taxes upon said illegal assessments, complainant will be remediless and will be involved in a multiplicity of suits.

(20) Complainant attaches hereto a statement (marked Exhibit C, which is prayed to be taken as a part hereof) showing the mileage of first main line track operated, total operating revenue, total operating expenses, Railway Tax Accruals and uncollectible railway revenue, railway operating income, revenue from miscellaneous operations, expenses of miscellaneous operation, total operating income, non-operating income, gross income, deductions from gross income and net income or deficit for the years 1916, 1917, 1918, 1919, 1920, and eight months of 1921. The properties were operated by United States Railroad Administration during the years 1918, 1919, and two months of 1920.

(21) Complainant is informed, and so avers, that the Commissioner of Revenue has certified to the State Auditor the said
20 sum of $22,840,932.00 as the value of all of Complainant's property in the State of North Carolina, and its two said lessors, tangible and intangible, including the franchise, so that the State Auditor might assess against Complainant the taxes imposed under Section 82 of Chapter 34, Public Laws, 1921. (Revenue Act.)

(22) That the Constitution requires that the Commissioner of Revenue assess complainant's property at its actual value in money. That the statutes of North Carolina, Chapter 38, Public Laws 1921 (Machinery Act) defines "actual value in money" to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at each sale when sold in such manner as such properties are usually sold. Section 23.

(23) Complainant shows that railroad property is not sold as a whole, that the only way it can be sold is by a sale of its stocks and bonds, upon the markets of the country, that the value of complainant's entire properties, when sold as such properties, are usualy sold, is and has been on the average for six years last past $17,717,000.00, including that both in North Carolina and Virginia, that the value for 1921 was less than that sum. That the Commissioner of Revenue did not ascertain the sale value of complainant's property in the manner in which it is usually sold, by a sale of its and its lessor

companies' stocks and bonds, divide that value between the states in which it is situate on either a mileage pro rate or on a percentage of cost of reproduction and assess complainant's property on that basis, as required by the Constitution, but adopted another
21 method, to wit: The cost of reproduction now, less depreciation brought down to date, and assessed complainant's property on that basis, and allotted to North Carolina a mileage pro rate thereof.

Said assessment was made contrary to the mandate of the Constitution of the State, denied to complainant the equal protection of the laws, deprives it of its property without due process of law, in violation of the fourteenth amendment to the Constitution of the United States.

(24) The General Assembly of North Carolina at its biennial session held in 1921, adopted a system of taxation for the support of the State, generally known and referred to as the Revenue Act (and hereinafter referred to by that name) being Chapter 34 of the Public Laws of 1921, being an Act entitled, "An Act to Raise Revenue," ratified the eighth day of March, 1921. The whole of said Act may be referred to. That part of said Act deemed material to this controversy is set out in sections 3, 4, 26, 76, 82, and 85, and are prayed to be taken as a part hereof

Under the said system of taxation, it is declared that no tax upon property (for the year 1921) shall be levied for any State purpose; that the State government shall be maintained out of:

(*a*) Taxes upon inheritances, imposed under Schedule AA of said Act.

(*b*) A system of income taxes, imposed under Schedule D of the said Act, under which a tax of 3 per cent. upon the "Net Operating Railway Revenue" of Railroad Companies—after making certain additions and deductions thereto—is levied upon Railroad Companies. The tax year for that tax has not been completed, and no tax can be levied thereunder until the tax year is completed and the proper basis established.

22 (*c*) A system of occupation taxes, or taxes levied and imposed upon individuals and corporations for the right and privilege to engage in, conduct and carry on the trade, business or occupation taxed by said statute.

(25) Complainant long prior to January 1, 1921, duly filed with the Interstate Commerce Commission and duly published tariffs, as required by "An Act to Regulate Commerce," approved February 4, 1887, and the several amendments and supplements thereto (commonly known and hereinafter referred to as the Interstate Commerce Act) and was long prior to January 1, 1921, and at all times since said date has been duly authorized and empowered to engage in and carry on over its said line of railroad, and every part thereof, the business of conducting and carrying on commerce among the several states and foreign commerce, and Complainant prior to Janu-

ary 1, 1921, and at all times since said date, and now is, engaged in carrying on and conducting, as a common carrier of freight and passengers by railroad, engaged in commerce with foreign nations and among the States, which business is conducted and carried on over and by means of said line of railroad, and every part and parcel thereof, situate in the State of North Carolina, as well as in the State of Virginia, and all and every of the agencies owned or employed by Complainant in the State of North Carolina, including the property of Complainant and its lessors, is used and engaged in conducting and carrying on the business and occupation of commerce with foreign nations and among the several states.

Complainant further says, that in order to reduce the burden upon interstate commerce, it uses the same agencies in the business of carrying on intrastate commerce; that the amount of intrastate commerce carried is very small as compared with the
23 interstate commerce. Complainant cannot say the exact proportion, but the best estimate that can be given is that not more than fifteen per cent. (15%) or twenty per cent. (20%) of the entire revenue in North Carolina arises from intrastate commerce, while eighty or eighty-five per cent. arises from interstate commerce.

(26) Complainant shows that under the Interstate Commerce Act, as amended, it is required to conduct and carry on in the State of North Carolina, on its said line of railroad, and every part thereof, the business of a common carrier of freight and passengers by railroad, in commerce with foreign nations and among the several states, until the Interstate Commerce Commission, upon application to it made and after hearing, shall or may authorize complainant to cease and desist from said business, and under said Interstate Commerce Act, as amended, Complainant may not until so authorized by the Interstate Commerce Commission cease and desist from using its said line of railroad and the agencies connected therewith in North Carolina in intrastate commerce of said State as an ancillary or aid in reducing the cost of conducting such interstate commerce.

(27) Complainant is informed, believes, and so charges, that acting in accordance with the directions contained in Sec. 82 (6½) of Chapter 34, Public Laws of 1921 (Revenue Act), the Commissioner of Revenue (State Tax Commission) certified to Baxter Durham, State Auditor, as the value upon which the amount of taxes which should be paid by Norfolk-Southern Railroad Company, as a franchise or privilege tax, should be calculated the sum of $22,840,932.00, certifying that to be the value of the property, tangible
and intangible of Norfolk-Southern Railroad Company, in-
24 cluding the property of its said lessors Atlantic and North Carolina Railroad Company and Carthage and Pinehurst Railroad Company, and the franchise of the said companies, and the said sum being the amount at which the property of complainant and its two said lessors, tangible and intangible, including their franchises, had been valued for ad valorem taxes; and in like man-

ner certified to the State Auditor for like purposes, the sum of $372,300.00 as the value of the property of the Durham and South Carolina Railroad Company, which property is under lease to Complainant, and the taxes on which Complainant is obligated to pay.

(28) That Baxter Durham, State Auditor, has notified complainant that there has been levied against it under the provisions of section 82 (6½) Chapter 34 Public Laws 1921 (Revenue Act), a franchise tax of one-tenth of one per cent upon $22,840,932.00 and that the tax amounted to $22,840.92, and that unless the same was paid within thirty days from September 22, 1921, the pains and penalties authorized by law would be inflicted upon complainant.

The said Baxter Durham, State Auditor, on and as of September 22, 1921, gave notice to Durham and South Carolina Railroad Company, that there had been levied and assessed against it under section 82 (6½) Chapter 34, Public Laws 1921 (Revenue Act), a tax of one-tenth of one per cent upon $372,300.00, that being the assessed value of Durham and South Carolina Railroad Company's property, tangible and intangible, including the franchise in the State of North Carolina, and that the tax thereon was $372.30, and that unless it was paid within thirty days from said date the pains and penalties authorized by the statutes would be imposed upon complainant.

25 That if the tax is legal and authorized by law, complainant is under obligation to pay the same, not only by the terms of its express contract, but by the decisions of the Supreme Court of the State of North Carolina. See Blount vs. Willard, 33 N. C., 634.

Complainant is informed, believes and alleges that the said State officers, to wit: Augustus D. Watts, Commissioner of Revenue, Baxter Durham, State Auditor, Benjamin R. Lacy, State Treasurer, will in obedience to the statutes of North Carolina, undertake to collect the said amount of taxes set out in said notices as a privilege or license tax, for the privilege to complainant of operating its said line of railroad, and conducting and carrying on the business of a common carrier of freight and passengers by railroad, engaged in inter and intrastate commerce, and that if said taxes be not paid, will undertake to impose and inflict upon complainant and its several lessors, the pains and penalties authorized by law to be inflicted.

(29) Complainant shows that said tax is a tax measured by a given per cent of the amount of the assessed value of Complainant's property as found by the Commissioner of Revenue (State Tax Commission), and is imposed upon complainant or attempted to be imposed for the privilege of doing the business of a common carrier of freight and passengers by railroad, engaged in commerce with foreign nations and among the several states, conducted and carried on by complainant over said lines of railroad, by virtue of power and authority of its charter, obtained from the State of Virginia, and by authority of and in obedience to the Constitution and laws of the United States; that as such it constitutes a direct burden upon commerce with foreign nations and among the several states, and is

in violation of the Constitution and laws of the United States,
26 and especially of paragraph 3, section 8, of article 1 of the Constitution, and the laws passed pursuant thereto.

That in so far as the said Revenue Act, by said section 82 (6½), or any other section thereof, authorizes or attempts to levy and/or impose the said tax as license tax upon complainant for the right and privilege of doing business in the State of North Carolina, as a common carrier of freight and passengers, over the said line of railroad, engaged in commerce with foreign nations and among the several states, it is in violation of the Constitution of the United States, article 1, section 8, paragraph 3 thereof, and of the statutes passed pursuant to the power thereby vested in Congress, and constitutes a direct burden upon such commerce; that in so far as the said Revenue Act attempts to levy and impose the said license tax, or any other license tax upon complainant for the right or privilege to exist as a corporation or to conduct and carry on business it denies to complainant and its said lessors the equal protection of the law, and its payment and collection will deprive complainant and its said lessors of their property without due process of law, and is in violation of the fourteenth Amendment to the Constitution of the United States; that the said tax is contrary to the provisions of the Constitution of North Carolina. as set out in Article V thereof, for that it destroys the uniformity of taxation, which the Constitution imposes upon any system of taxation adopted by the Legislature, and denies to complainant the equal protection of the Laws, and deprives it of its property without due process of law, all in violation of the fourteenth Amendment to the Constitution of the United States, as well as in violation of the Constitution of the State of North Carolina.

27 (30) Complainant shows that under the laws of North Carolina, it cannot pay said taxes and bring suit against the State to recover the same back, as there is no provision in the Laws of North Carolina which authorizes the payment of contested taxes, which are payable direct to the State, and the institution of a suit against the officer collecting the same, or any other person to recover the same back; that the said tax is sought to be made a lien upon the complainant's said property, prior to all other liens, and to displace pro tanto all prior liens, and as such constitutes a cloud upon complainant's title to its said property; that unless complainant or its lessors Atlantic and North Carolina Railroad Company, Carthage and Pinehurst Railroad Company, or Durham and South Carolina Railroad Company, pay said taxes, that the lien upon said properties attempted to be created by the said statute, if valid, will be a lien prior to the lease which said companies have made to complainant, and as such constitutes a cloud upon complainant's own property, and a cloud upon complainant's leaseholds in the other properties, and will, unless said taxes are paid, when due and payable, if valid, be a ground for the avoidance of said leases; that in addition to the aforesaid matters, unless said taxes are paid at the time and in the manner required by the said statute, to wit: section 82, Chapter 34,

of the Public Laws of 1921, upon report made to him, as required by Law, the Secretary of State will undertake and attempt to cancel complainant's right to do business in the said State, and will undertake to cancel and annul the corporate existence of its lessor companies, Atlantic and North Carolina Railroad Company, Carthage and Pinehurst Railroad Company, and Durham and South Carolina Railroad Company, and in addition, after said cancellations are made, if any agent, employee or officer of any of said corporations, or the complainant company, shall undertake to do or
28 perform any act for and on behalf of the said corporations, to direct or carry out any business for and on behalf of said corporations, such agents and officers will be made guilty of a crime and made liable to a fine of not less than $100.00, nor more than $1,000.00.

(31) That the aforesaid license or privilege tax of one tenth of one per cent imposed upon railroads under section 82 (6½) chapter 34, Public Laws of 1921 (Revenue Act) is one of the taxes imposed under section 82; that subsection 3½ of said section 82 provides:

"That where a report required to be made under the provisions of this section to the State Tax Commission, by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which the report is made, or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under the rules laid down in section 82 of this act, to be less than one-half of the assessed value of taxation for all the property of such company in this State, for the year in which such report is made, the measure of the extent to which the corporate franchise of any such company is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation in this State."

Complainant shows that it reported to the State Tax Commission, the amount of its capital stock, to wit: $16,000,000.00, dividing this capital stock between the States of Virginia and North Carolina, upon the same percentage basis as the complainant is informed and believes the State Tax Commission divided the property of the complainant, to wit: 87.754 to North Carolina and 12.246 to Virginia; that that part of its capital stock allocatable to North Caro-
29 lina would be $14,040,640.00; that if the said capital stock be allocated between the two States on the basis of the relative cost of reproduction now less depreciation, as shown by the report of the Interstate Commerce Commission, to wit: eighty-two per cent to North Carolina, and eighteen per cent to Virginia, the proportion of the capital stock of complainant allocatable to North Carolina would be $13,120,000.00.

That said section 82 of Chapter 34 of the Public Laws of 1921 (Revenue Act) undertakes to make an arbitrary classification against corporations, based on the amount of property in the State, compared with the amount of capital stock issued and outstanding, and allocatable to the State, and under said section, if the amount of property in the State listed for ad valorem taxes is more than double the amount of the capital stock allocatable to the State in the manner required by section 82 of the Revenue Act, then and in that event the franchise, license or privilege tax imposed under said section 82 is made payable upon one-half of the assessed valuation of the property, whereas, otherwise, it is made payable upon the entire assessed valuation of the property. That such classification is arbitrary, unreasonable and unjust, is in violation of the uniformity provisions of the Constitution of the State of North Carolina, denies to complainant and its lessors, the equal protection of the laws, and undertakes to deprive them of their property without due process of law, all in violation of the fourteenth amendment to the Constitution of the United States.

(32) The pains and penalties authorized to be inflicted upon the complainant in the event of the failure to pay said taxes and permit suit to be brought are so onerous and oppressive as to deny to complainant and said lessors the equal protection of the law and to deprive it of its property without due process of law, all in violation of the fourteenth amendment to the Constitution of the United States, and complainant has no adequate remedy at law against such oppressive, unjust and illegal taxes, and unless it can be protected in equity is without protection.

(33) Complainant shows that, under the laws of North Carolina, in addition to the right of the State to bring an action at law to collect said tax, the following penalties are sought to be imposed:

(*a*) The said tax is sought to be made a lien upon Complainant's said property prior to all other liens, and to displace pro tanto all prior liens and as such constitute a cloud upon Complainant's title to its said properties, Section 82 (12).

(*b*) The Secretary of State, if said tax be not paid within ninety days, is required to cancel Complainant's right to do business in the State, and upon such cancellation being made, if any agent or officer undertakes to transact any business for complainant in said State, he is made guilty of a crime and liable to a fine of not less than one hundred dollars nor more than one thousand dollars. Section 82 (17 and 18).

Whereas, and forasmuch as Complainant is remediless in the premises, according to the common law, and remediable only in equity, and that complainant may not be subjected to the pains and penalties set out in the statutes of North Carolina, and that the cloud may be removed from the title to its said properties, and, that com-

plainant may not suffer irreparable damage and that its business of an interstate carrier of passengers and freight required to be carried on under the Constitution and laws of the United States may not be interfered with, or unduly burdened, and that it may not be
31 deprived of its property without due process of law, nor denied the equal protection of the laws, and that the correct amount, if any, of taxes which complainant shall be required to pay to State of North Carolina, under said Revenue Act, Chapter 34, Public Laws, 1921 may be ascertained, complainant prays for a writ subpena to issue against the defendants and each and every one of them named and described, commanding them to appear and full and true answer make to this bill of complaint and the several things and matters therein set out, but not under oath, an answer under oath being expressly waived, as to each and every of said defendants. That each of the defendants named in their several individual and official capacities be enjoined and restrained from taking any steps to collect said taxes levied or imposed under Section 82 of Chapter 34 Public Laws, 1921 (Revenue Act), or to inflict upon complainant and/or its several lessors, any of the pains and penalties authorized to be imposed and inflicted by the laws of North Carolina, and that a preliminary injunction be issued pending the final hearing and that upon the final hearing the Commissioner of Revenue be enjoined and commanded to cancel the illegal assessment aforesaid, to withdraw from the several counties, cities, towns and local taxing districts the aforesaid illegal assessments and to certify for ad valorem taxation, a true and correct assessment, made in accordance with the mandate of the Constitution of the State, and that the said taxes assessed or attempted to be assessed by Baxter Durham be declared to be illegal and void and that the several defendants, named as sheriffs and tax collectors be enjoined and restrained, both temporarily until the hearing, and after the final hearing permanently, from selling or exposing for sale, any of complainant's, or its lessors' property, on account of said taxes, or the collection of any penalties for failure to pay said taxes, and
32 for all other, further, general and special relief as in equity it may be entitled to.

This is the first application for injunction in this cause.

JOHN M. ROBINSON,
W. B. RODMAN, JR.,
Solicitors for Complainant.

W. B. RODMAN,
C. M. BAIN,
Of Counsel.

STATE OF NORTH CAROLINA,
City of Norfolk:

M. S. Hawkins, being duly sworn, deposes and says that complainant, Norfolk-Southern Railroad Company, is a corporation, and that he is one of its officers, to wit: Secretary, that he has read the foregoing bill of complaint, and knows the contents thereof, and that

the same is true to his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

M. S. HAWKINS.

Sworn and subscribed to before me this twel-th day of October, 1921.

J. R. PRITCHARD,
Notary Public.

My commission expires on the tenth day of October, 1925.

33 EXHIBIT A.

Article V—Revenue and Taxes.

Section 3. Taxation shall be by uniform rule and ad valorem: Exemptions: Laws shall be passed taxing by a uniform rule all moneys, credits, investments on bonus, stock joint stock corporations or otherwise; and also all real and personal property according to its true value in money.

* * * * * * *

The general assembly may also tax trades, professions, franchises, and income.

* * * * * * *

Section 6. Taxes levied for County purposes: The total of the State and County tax on property shall not exceed fifteen cents on the hundred dollars value of property, except when the County property tax is levied for a special purpose and with the special approval of the general assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by Article nine, Section three of the constitution: Provided, further, the State tax shall not exceed five cents on the hundred dollars of value of property.

Article VII—Municipal Corporations.

Section 9. Taxes to be ad valorem: All taxes levied by any county, city, town or township, shall be uniform and ad valorem upon all property in the same; except property exempted by this constitution.

Article VIII—Corporations Other Than Municipal.

Section 4. Legislation to provide for organizing cities, towns, etc.: It shall be the duty of the legislature to provide by general laws for the organization of cities, towns and municipal villages, and to restrict their powers of taxation, assessment, borrowing money, contracting debts and loaning their credits so as to prevent abuses in assessments and in contracting debts by such municipal corporations.

Statement Showing Outstanding Capital Stock and Bonded Indebtedness of Norfolk-Southern Railroad Company, Atlantic and North Carolina Railroad Company, and Carthage and Pinehurst Railroad Company for the Years 1915 *to* 1920, *Inclusive.*

Designation.	Par value amount in hands of public.	Market value. 1915.	1916.	1917.	1918.	1919.	1920.
1. N&S 1st Mtg. 5's..	$1,655,000	$1,630,175	$1,638,450	$1,634,312	$1,373,650	$1,406,750	$1,266,075
2. N&S 1st Gen. M. 5's	825,000	742,500	713,625	610,500	552,750	556,875	478,500
3. S&C Cons. Mtg. 5's	650,000	585,000	552,500	481,000	435,500	442,000	265,500
4. R&CF 1st Mtg. 5's	137,000	120,450	115,423	106,860	97,270	98,640	90,240
5. R&S Ry. 1st. Mtg. 5's	374,000	329,120	313,330	289,850	265,540	269,280	231,880
6. A. R&S Ry. Gen. Mtg. 6's	176,000	154,880	147,400	.....	.....	.....	.....
7. A&A 1st Mtg. 5's.	164,000	131,200	131,200	118,900	109,880	106,600	98,400
8. B. NSRR 1st & R. M. 5's	13,294,000	10,444,140	10,489,000	10,086,360	8,262,530	7,980,250	6,640,710
9. A&NC 1st Mtg. 6's	325,000	325,000	325,000	325,000	325,000	325,000	325,000
10. C&PRR 1st Mtg. 6's	37,500	37,500	37,500	37,500	37,500	37,500	37,500
11. C. Equip. Tr. Ser. A 5's	425,000	414,375	332,500	282,000	235,000	188,000	141,000
12. D. Equip. Tr. Ser. B 6's	22,400	.....	22,464	19,968	17,290	14,664	12,545

13. Gen. Equip. Trs. Notes	.....	.....	34,000	10,000	.....	.....	.....
14. United Iron Works Notes ..	.....	.....	3,120	.....	.....	.....	.....
15. E. N.S. Collateral Trust 3 yr. notes 6 and 7%	1,000,000	.....	.....	750,000	750,000	750,000	750,000
16. F. Equip. Trust No. 55—6% ..	123,200	.....	.....	.....	.....	.....	123,200

Capital Stock.

NSRR Co.	$16,000,000	$3,360,000	$4,120,000	$3,880,000	$2,730,000	$2,330,000	$3,040,000
A&NCRR Co.	1,800,000	1,350,000	1,350,000	1,350,000	1,350,000	1,350,000	1,350,000
C&PRR Co.	69,900	13,980	13,980	13,980	13,980	13,980	13,980
Total	.....	$19,626,320	$20,339,392	$19,996,730	$16,605,890	$15,859,539	$14,866,230

Average value for six years—$17,717,700.

A—Retired in 1917.

B—Amount outstanding: 1915—$12,294,000; 1916—$12,870,000; 1917—$12,870,000; 1918—$12,835,000; 1919—$12,400,000; 1920—$12,355,000.

C—These notes are being retired at the rate of $50,000 par value per year.

D—These notes are being retired at the rate of $2,600 per year.

E—Issued in 1917.

F—Issued in 1920.

35

EXHIBIT C.

	1916.	1917.	1918.	1919.	1920.	Eight months of 1921.
1. Miles Operated .	907.71	907.71	907.41	906.77	928.10	942.83
2. Total Oper. Rev.	$4,939,172.28	$5,299,913.71	$5,753,643.86	$6,591,277.09	$7,750,826.08	$5,231,450.80
3. Total Oper. Exp.	3,272,199.85	3,630,368.17	5,273,561.06	6,197,545.80	8,274,079.32	4,596,388.91
4. Ry. Oper. Rev. .	1,666,972.43	1,619,545.54	480,082.82	373,681.29	*523,253.24	635,061.89
5. Ry. Tax. Accru. and Uncollectible Ry. Rev..	163,729.73	196,078.81	194,133.25	212,915.58	253,039.78	259,612.81
6. Ry. Oper. Inc. .	1,503,242.70	1,423,466.73	285,949.57	180,765.71	*776,293.02	375,449.08
7. Rev. from Misc. Oper.	.....	.....	.....	.....	.....	63,181.69
8. Exp. of Misc. Oper.	.....	.....	.....	.....	.....	*67,809.20
9. Total Oper. Inc.	1,503,242.70	1,423,466.73	285,949.57	180,765.71	*776,293.02	370,821.57
10. Non-Oper. Inc. .	62,802.29	73,323.01	221,702.41	242,820.70	67,949.63	465,742.46
11. Gross Income ..	1,566,044.99	1,499,789.74	507,651.98	423,586.41	*708,343.39	836,564.03
12. Total Deductions from Gross Inc.	1,060,533.91	1,160,106.30	47,042.19	112,179.59	154,595.53	1,237,983.71
13. Net Income ...	505,511.08	339,683.44	460,609.79	311,406.82	*862,938.92	*401,329.68

*Deficit.

36 *Application for Interlocutory Injunction.*

Filed October 17, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK-SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Application for Interlocutory Injunction.

Comes the above-named plaintiff and shows the Court:

That it has instituted in this Court by bill of complaint an action against A. D. Watts, as Commissioner of Revenue of the State of North Carolina, and other defendants as shown in said bill which is now referred to and made a part of this application, the object and purpose of the action being to secure from this Honorable Court an order enjoining preliminarily and perpetually the defendants, who are tax assessing, collecting, and enforcing officers, of the State of North Carolina and its municipal subdivisions, from collecting or instituting proceedings to collect State, county, municipal, or other taxes levied upon or based upon an illegal over-assessment of plaintiff's property, made and certified to them by the Revenue Commissioner of North Carolina, which assessment is contrary to the Constitution and laws of North Carolina and the Constitution of the United States. The bill alleges and sets forth the grounds of unconstitutionality of the assessment and of the statutes of North Carolina under which said invalid assessment was made and under which the illegal taxes will be collected by the defendants named
37 in said bill unless restrained by this Honorable Court, all of which is more fully alleged, set out, and explained in the bill of complaint filed herein.

Plaintiff alleges that the franchise tax levied under Section 82 of the Revenue Act of North Carolina, ratified March 8, 1921, is unconstitutional and that no tax can be levied thereon under any assessment, and the action of the State's tax collecting officer in the execution of said void statute is sought to be enjoined. Said tax is due and payable on or before the twenty-second day of October, 1921, and if not paid by December 1, 1921, a penalty of ten per cent (10%) is added to such tax, and other pains and penalties are inflicted.

The ad valorem taxes levied by the counties, towns and local taxing districts, upon said illegal assessments is now due and payable, and unless paid the Sheriff may levy and sell property of this plaintiff

after November 1, 1921, and other pains and penalties will be inflicted.

The municipal and other taxes levied upon said illegal assessments will become due and the collection thereof will be undertaken prior to the determination of this cause unless the tax collecting officers are restrained.

Wherefore, application is made under Section 266 of the Judicial Code for an interlocutory injunction as prayed for in said bill, and this Court is petitioned to call to his assistance to hear and determine this application two other Judges, and that the statutory notice of the hearing of this application be given the Governor and the Attorney General of the State of North Carolina and each of the defendants to the said bill, and an order issue requiring the defendants to show cause at the time and place to be fixed by this Court according to law why said interlocutory injunction should not issue as prayed for.

This application is based upon the verified bill of complaint on file herein.

JOHN M. ROBINSON,
Attorney for Plaintiff.

38 *Order on Application for Interlocutory Injunction.*

Filed October 17, 1921.

In Equity.

No. 439.

NORFOLK-SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Order for District Judge on Application for Interlocutory Injunction.

The application for an interlocutory injunction was presented to me this 17th day of October, 1921; and having read and considered the verified bill filed in this cause, and the application for a hearing for interlocutory injunction under Section 266 of the Judicial Code, and being advised that for the reasons set forth in said application and upon the grounds stated therein and in the verified bill, plaintiff is entitled to have its application heard under Section 266 of the Judicial Code:

It is ordered, that the application be filed and a hearing of the application for an interlocutory injunction be had and proceeded with in accordance with Section 266 of the Judicial Code as amended by Act of Congress approved March 14, 1913, and such hearing is set down for the 31 day of Oct., 1921, at the United States Court rooms in the city of Newbern North Carolina, at 10 o'clock.

It is further ordered, that notice of said hearing, not less than five

days, shall be given to the Governor and the Attorney General of the State of North Carolina, and to each of the defendants to this suit. And I hereby call to my assistance at said hearing of said application the Honorable Edmund Waddill Jr., Circuit Judge of the Circuit, and the Honorable Jas. E. Boyd, District Judge of the Western District of North Carolina.

This October 17, 1921, at Wilson, North Carolina.

H. G. CONNOR,
District Judge.

39 *Notice of Hearing of Application for Interlocutory Injunction.*

Filed October 17, 1921.

In Equity.

No. 439.

NORFOLK-SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Notice of Hearing of Application for Interlocutory Injunction under Judicial Code, Section 266.

To Honorable Cameron Morrison, Governor of the State of North Carolina; Honorable James S. Manning, Attorney-General of the State of North Carolina, and Frank Nash, Assist. Atty. General; Honorable A. D. Watts, Revenue Commissioner of the State of North Carolina; Honorable Baxter Durham, Auditor of the State of North Carolina; Honorable Benjamin R. Lacy, Treasurer of the State of North Carolina; Honorable J. Bryan Grimes, Secretary of State of the State of North Carolina, and to each of the defendants named in the above bill:

You, and each of you, are hereby notified that the Norfolk-Southern Railroad Company, plaintiff, has filed its verified bill of complaint in the District Court of the United States for the Eastern District of North Carolina against A. D. Watts, Revenue Commissioner, et al., praying an injunction against the named tax assessing, collecting and enforcing officers of the State of North Carolina and its municipal subdivisions from collecting or instituting proceedings to collect, State, county, municipal or other taxes levied upon or based upon the alleged illegal over-assessment of plaintiff's property for the year 1921, made and certified to by the Revenue Commissioner of the State of North Carolina, and also praying that said tax laws of North Carolina be declared unconstitutional, as will appear from the bill filed herein.

In this cause plaintiff has made application for an interlocutory injunction under Section 266 of the Judicial Code of the United States. The application for such interlocutory injunction will be heard in the United States District Court, in the city of Newbern, North Carolina, on the 31 day of Oct., 1921, at 10 o'clock A. M., and you, and each of you, are notified to appear at said time and place and show cause, if any, why the interlocutory injunction prayed for should not be granted.

Done in open court this 17 day of Oct. 1921.

H. G. CONNOR,
Judge.

40 *Service of Notice of Hearing.*

Filed Oct. 24, 1921.

Return on Service of Notice of Hearing of Plaintiff's Application for Interlocutory Injunction.

STATE OF NORTH CAROLINA,
Eastern District of North Carolina, ss:

I hereby certify and return that I served the foregoing notice on the therein named parties as below by handing to and leaving a true and correct copy thereof with each personally, at Raleigh in said District, on the 19 day of October 1921.

GEO. H. BELLAMY,
U. S. Marshal,
By B. H. MEADOWS,
Deputy.

Cameron Morrison.
J. S. Manning.
Frank Nash.
A. D. Watts.
Baxter Durham.
B. R. Lacy.
J. Bryan Grimes.

Marshal's fees, $14.00.

41 *Stipulation for Service of Subpœna.*

Filed Oct. 18, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina; BAXTER Durham, State Auditor of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; J. Bryan Grimes, Secretary of State of North Carolina; James S. Manning, Attorney General of North Carolina; Frank Nash, Asst. Attorney General of North Carolina and Others.

Stipulation.

In this cause it is agreed that a copy of the bill and order to show cause why a preliminary injunction should not be issued, shall be served upon the defendants, other than the State Officials, by the Clerk of the United States District Court mailing to each of the defendants named a copy of the bill and order to show cause. As to the State Officials a copy of the bill and order to show cause shall be served by the Marshal in the usual way.

The writ of subpœna shall be served in the same manner as the bill and order to show cause, that is, by the Marshal upon the State Officials named in the bill and by the Clerk of the United States Clerk mailing to each of the defendants named a copy of the subpœna, all the papers named to be sent by registered mail. And it is stipulated that this service shall be the same in legal effect
42 as if made by the Marshal.

JAMES S. MANNING,
Attorney General.
NORFOLK SOUTHERN RAILROAD COMPANY,
By W. B. RODMAN,
General Counsel.

October 18, 1921.

43 *Subpœna.*

Issued Oct. 18, 1921.

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

District Court, Fourth Circuuit, at Raleigh.

The United States of America to J. Bryan Grimes, Secretary of State of N. C., Raleigh, N. C.; James S, Manning, Attorney General of North Car., Raleigh; Frank Nash, Assistant Attorney General for N. C., Raleigh, Greeting:

We command you, and every of you, that you appear before the Judges of our District Court of the United States of America, for the Eastern District of North Carolina, at the office of the Clerk of said Court, in the City of Raleigh, in said District, on the 7th day of November, next, to answer the Bill of Complaint of The Norfolk Southern Railroad Company, a citizen and resident of the State of Virginia, filed in the Clerk's office of said Court, in said City of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of Judgment being pronounced against you by default.

To the Marshall of the Eastern District of North Carolina to Execute.

Witness, The Hon. Wm. Howard Taft, Chief Justice of the Supreme Court of the United States, at Raleigh, in said District, the 18th day of Oct., 1921, and in the 146th year of the Independence of the United States.

Issued the 18th day of Oct., 1921.

S. A. ASHE,
Clerk U. S. District Court.

The within-named defendants are notified that unless they enter their appearance in the Clerk's office of said District Court at Raleigh and file their answer, or other defense, on or before the 20th day after service hereof, excluding the day of service, the bill filed herein will be taken as confessed and a decree entered accordingly.

S. A. ASHE,
Clerk U. S. District Court.

44 *Marshal's Return on Same.*

Filed Oct. 24, 1921.

Received at Raleigh, October 19, 1921. Executed at Raleigh, October 19, 1921, by serving the within Subpœna and leaving copy with J. Bryan Grimes, J. S. Manning and Frank Nash.

GEO. H. BELLAMY,
U. S. Marshal,
(S.) Per B. H. MEADOWS,
Dep.

Marshal's Fee, $6.00.
Marshal's Cost, $—.

I certify that the within is entered and filed this day.
Oct. 24, 1921.
S. A. ASHE,
Clerk.

45 *Subpœna.*

Issued October 18, 1921.

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

District Court, Fourth Circuit, at Raleigh.

The United States of America to Augustus D. Watts, Commissioner of Revenue for N. C., Raleigh, N. C.; Baxter Durham, State Auditor for North Car., Raleigh, N. C.; B. R. Lacy, State Treasurer for North Car.; Greeting:

We command you, and every of you, that you appear before the Judges of our District Court of the United States of America, for the Eastern District of North Carolina, at the office of the Clerk of said Court, in the City of Raleigh, in said District, on the 7th day of November, next to answer the bill of complaint of The Norfolk Southern Railroad Company, a citizen and resident of the State of Virginia, filed in the Clerk's office of said Court, in said City of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of Judgment being pronounced against you by default.

To the Marshall of the Eastern District of North Carolina to execute.

Witness, The Hon. Wm. Howard Taft, Chief Justice of the Supreme Court of the United States, at Raleigh, in said District, the 18th day of Oct., 1921, and in the 146th year of the Independence of the United States.

Issued the 18th day of Oct., 1921.

S. A. ASHE,
Clerk U. S. District Court.

The within-named defendants are notified that unless they enter their appearance in the Clerk's office of said District Court at Raleigh and file their answer, or other defense, on or before the 20th day after service hereof, excluding the day of service, the bill filed herein will be taken as confessed and a decree entered accordingly.

S. A. ASHE,
Clerk U. S. District Court.

46 *Marshal's Return on Same.*

Filed Oct. 24, 1921.

Received at Raleigh, October 19, 1921. Executed at Raleigh, October 19, 1921 by serving the within Subpœna and leaving copy with A. D. Watts, Baxter Durham and B. R. Lacy.

GEO. H. BELLAMY,
U. S. Marshal,

(S.) Per B. H. MEADOWS,
Dep.

Marshal's Fee, $6.00.
Marshal's Cost, $—.

I certify that the within is entered and filed this day.

Oct. 24, 1921.

S. A. ASHE,
Clerk.

47 *Clerk's Notation on Subpœna to Defendants in Western District.*

Filed Oct. 24, 1921.

Executed Oct. 18, 1921, by sending by registered letter copy of Equity Subpœna and Order to Show Cause to all Sheriffs and Tax Collectors residents of the Western District of North Carolina, as mentioned in the Bill of Complaint.

S. A. ASHE,
Clerk,
By S. A. ASHE, JR.,
Chief Deputy Clerk.

I certify that the within is entered and filed this day.

Oct. 24, 1921.

S. A. ASHE,
Clerk.

48 *Clerk's Notation on Subpœna to Defendants in Eastern District.*

Filed Oct. 24, 1921.

Executed Oct. 19, 1921, by sending by registered letter copy of Equity Subpœna and Order to Show Cause to all Sheriffs and Tax Collectors residents of the Eastern District of North Carolina, as mentioned in the Bill of Complaint.

S. A. ASHE,
Clerk,
By S. A. ASHE, JR.,
Chief Deputy Clerk.

I certify that the within is entered and filed this day.

Oct. 24, 1921.

S. A. ASHE,
Clerk.

49 *Order Continuing Hearing.*

Filed Nov. 3, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, et als.

This cause coming on to be heard at Newbern on Monday, October 31, 1921, upon the application of complaint for an interlocutory injunction, as prayed for in the bill, and as set out in the order to show cause, it is now, on motion of complainant, and by consent of the defendants, ordered, adjudged, and decreed that the application and motion for the interlocutory injunction, as prayed for in the bill, and as set out in the notice, be continued to be heard in the court room of this court at Raleigh, North Carolina, on Monday November 21, 1921 at 10:00 o'clock A. M.

And it is further ordered, adjudged and decreed that no penalties shall be attached or sought to be imposed.

That this order of continuance is made without prejudice to either complainant or defendants and that the matter will be heard upon the original application in the same manner and to the same extent as if it had been heard at the time fixed in the original notice and

order to show cause, and before the Judges named in the order or such other Judges as may be authorized or provided by law.

This 31st day of October, 1921.

(S.) H. G. CONNOR,
U. S. District Judge.

50 *Motion to Dismiss.*

Filed Nov. 21, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

v.

A. D. WATTS, Individually and as Commissioner of Revenue, et als.

Motion.

Come now the defendants, A. D. Watts, and others names as defendants in the complaint filed in this suit, and move the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss this suit, because it is conceded in the complaint that the plaintiff owes and is liable to pay the defendants taxes on property situated within the State of North Carolina and in the several counties named in the complaint and in the several cities, towns and taxing districts named in the complaint, property of the value of $18,000.00, on which said property the plaintiff, as it appears in its said complaint, has not paid or tendered payment of the taxes due thereon.

(Signed) JAMES S. MANNING,
Solicitors for the Defendants.

(Signed) GEORGE H. BROWN,
(Signed) WM. P. BYNUM,
(Signed) LOCKE CRAIG,
(Signed) T. D. WARREN,
(Signed) S. S. ALDERMAN,
Of Counsel.

51 *Agreement for Hearing at Greensboro.*

Filed Nov. 21, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

v.

A. D. WATTS, Commissioner of Revenue, et als.

Order.

This case coming on to be heard in Raleigh on Monday, November 21st, 1921, upon the application of complainant for an interlocutory injunction as prayed for in the bill and as set out in order to show cause, and the defendants having filed a motion to dismiss the bill, and it appearing further that the complainant and the defendants have entered into a stipulation, the original of which is filed in this court, it is, on motion of the complainant, by consent of the defendants, ordered, adjudges and decreed that the application and motion for the interlocutory injunction and the motion to dismiss the bill be continued to be heard in the court room of the United States District Court at Greensboro in the Western District of North Carolina at such time as the similar actions brought in the Western District of North Carolina by the Southern Railroad Company, the Atlantic & Yadkin Railroad Company, and the Atlantic Coast Line Railroad Company vs. A. D. Watts, et als., shall be heard, and pending said hearing the stipulation entered into by the complainant and the defendants and approved by the court will be effective.

H. G. CONNOR,
United States District Judge.

Seen and approved:

(Signed) W. B. RODMAN,
(Signed) W. B. RODMAN, JR.,
(Signed) JOHN M. ROBINSON,
Counsel for Complainant.
(Signed) JAMES S. MANNING,
Atty. Gen.;
(Signed) GEORGE H. BROWN,
(Signed) T. D. WARREN,
(Signed) W. P. BYNUM,
(Signed) LOCKE CRAIG,
(Signed) S. S. ALDERMAN,
Counsel for Defendants.

52 *Stipulation of Counsel and Interlocutory Order.*

Filed Nov. 25, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

v.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

Stipulation.

The following stipulation is entered into between counsel for plaintiff and the Attorney General of North Carolina and his associates as counsel for all defendants, for each of which defendants they have entered an appearance:

It is agreed that in order that the defendants may have sufficient time in which to prepare the defense, the application for an interlocutory injunction under Section 266 of the Judicial Code is, with the consent of Court, continued until such date as the Court may select following January 1, 1922.

The foregoing continuance being agreed upon and it appearing that before the hearing and determination of the application certain taxes will come due to the State of North Carolina and to the counties, cities, towns, and other taxing districts; therefore, it is agreed by the Attorney General of North Carolina and his associates as representing all of the defendants, that if the Norfolk Southern Railroad Company pays the taxes it agrees hereinafter to pay, then no further or other taxes sought to be enjoined in the bill will be demanded or collected or any action or suit of any character begun to collect or any penalty assessed for the non-payment thereof until the further order of the Court.

The Norfolk Southern Railroad Company agrees that it will pay when due in accordance with the laws of the State of North Carolina to all counties, cities or towns, special school districts, or other special taxing districts all taxes that may be due each county, city special school or other special taxing district of the State, on its proper proportionate share of an aggregate ad valorem assessment against plaintiff of eighteen million dollars.

The Attorney General of North Carolina agrees that he will take all necessary action to have the Commissioner of Revenue certify to the several counties and taxing districts of North Carolina their proper proportion of the assessment of eighteen million dollars as soon after the date hereof as may be practicable and, if possible, within such period as will enable the Railroad Company to take ad-

53 vantage of any discount that it may be entitled to under the law.

It is agreed between the parties that the Norfolk Southern Railroad Company is not to demand a receipt in full for its 1921 taxes in consideration of the payment it makes, but is to receive a receipt for the amount of the taxes paid, and the amount of taxes so paid shall be in full of said taxes due if an assessment shall be finally fixed at a sum not in excess of eighteen million dollars, or such payment shall be a credit upon all taxes that may be due if the assessment of plaintiff's property for ad valorem tax purposes for the year 1921 shall be finally fixed in excess of said eighteen million dollars.

It is further agreed that if defendants desire to file an answer prior to the hearing of the application for an interlocutory injunction they shall file such answer or any motion or other pleading they desire to file by December 10, 1921, and furnish opposing counsel with copies thereof. Plaintiff shall have until December 24, 1921, to file any motion or reply pleading and any affidavits in support of bill or motion for interlocutory injunction or in reply and furnish opposing counsel with copies thereof. Defendants shall have until January 10, 1922, to file affidavits in support of their answer or in reply and plaintiff shall have until hearing to file reply affidavits.

The motion made in this cause to dismiss, it is agreed be continued to the hearing on the application for preliminary injunction at Greensboro.

This stipulation to become effective and filed in this Court upon approval hereof by the Court.

At 21st day of November, 1921.

W. B. RODMAN,
JOHN M. ROBINSON,
W. B. RODMAN, JR.,
Counsel for Plaintiff.
JAMES S. MANNING,
Attorney General of North Carolina;
LOCKE CRAIG,
T. D. WARREN,
GEO. H. BROWN,
WM. P. BYNUM,
S. S. ALDERMAN,
Counsel for Defendants.

Approved November 21, 1921.

EDMUND WADDILL, JR.,
U. S. Circuit Judge.
H. G. CONNOR,
JAS. E. BOYD,
U. S. District Judges.

54 *Answer.*

Filed November 30, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

Answer.

Come now A. D. Watts and the other defendants in the above-entitled suit and, answering the complaint filed by the plaintiff therein, say:

1. The allegations of article one are admitted.

2. The allegations of article two are admitted, except that defendants deny that they have knowledge or information sufficient to form a belief as to the allegations of the second paragraph of that article.

3. The allegations of article three are denied, except that it is admitted that this is a suit in equity, and that the amount in controversy, exclusive of interest and cost, exceeds the sum or value of three thousand dollars ($3,000).

4. The allegations of article four are admitted.

5. The allegations of article five are admitted.

6. The allegations of article six are admitted.

7. The allegations of article seven are admitted. The defendants aver, however, that in addition to the mileage of main line shown in the said article, the plaintiff has 159.65 miles of side track in North Carolina, and that the percentages of plaintiff's total mileage in North Carolina and in Virginia, stated in the said article, are based on mileage of main lines without consideration of side tracks.

55 8. The allegations of article eight are admitted, except the allegation that the assessment of the plaintiff's properties in North Carolina made by the State Tax Commission, at the sum of $27,023,462, was largely in excess of the actual value in money. The defendants aver that that valuation was made by the State Tax Commission for 1920 as of May 1, 1919; that after the appointment of the Commissioner of Revenue the plaintiff, June 21, 1921,

petitioned the said Commissioner to review this said assessment made by the State Tax Commission; that upon the hearing of that petition, and the evidence offered in its support, the Commissioner of Revenue was of the opinion, and in his discretion found, that the assessment made by the State Tax Commission was excessive and should be reduced, and he accordingly reduced the same to the sum of $22,840,932, which valuation was in accordance with and taken from one of the valuations placed upon its property by the plaintiff itself and submitted to the Commissioner of Revenue for his consideration. The action of the Commissioner gave to the plaintiff the benefit of a reduction of $4,182,530.

9. The allegations of article nine are admitted, except as to the name of the defendant Watts.

10. The allegations of article ten are admitted, except for the typographical error in referring to section 28 (*g*) of Chapter 38, as being Section 26 (*g*) of Chapter 28. The defendants aver, as hereinbefore alleged, that the said sum of $22,840,932 to which the plaintiff's assessment was reduced by the Commissioner of Revenue, was a figure submitted by the plaintiff itself and by it contended to be a correct valuation of its property in North Carolina for ad valorem taxation.

11. The allegations of artcie eleven are denied.

12. The allegations of article twelve are admitted. The defendants aver that the Commissioner of Revenue, after a consideration of all the evidence submitted to him and of the arguments made before him by the plaintiff at the time of the said petition to rehear, having no sufficient evidence before him to lead to a different conclusion, and having the acquiescence of the plaintiff in that
56 conclusion as correct, finally adopted the said sum of $26,028,366 as the basis upon which he should estimate the amount to which the assessment of the plaintiff's property in North Carolina for taxation should be by him reduced.

13. Answering the allegations of article thirteen the defendants deny that they have knowledge or information sufficient to form a belief as to whether the Interstate Commerce Commission has ever reported to the State of North Carolina the final value of the plaintiff's entire common carrier properties, as a going concern, as the term "value" was used in the Interstate Commerce Act, or as to when such report was made, if it has been made. The defendants aver, however, that no such final value was reported to the Commissioner of Revenue by the Interstate Commerce Commission or by any one else, and that at the time the plaintiff petitioned the Commissioner of Revenue for a review and reduction of its assessment for 1920, it submitted no such final value to the Commissioner nor was the same ever brought to his attention. The plaintiff did submit, however, of its own volition, the Interstate Commerce value referred to in article twelve of the complaint, and not only acquiesced in, but requested its adoption as the basis for the ascertainment of the ex-

tent to which the 1920 assessment should be reduced. The defendants aver that the validity of the valuation to which the 1920 assessment of the plaintiff's properties in North Carolina for ad valorem taxation was reduced by the Commissioner of Revenue at the plaintiff's request, with its acquiescence, and upon its own showing as to its valuation, can in no way be affected by any different valuation fixed by the Interstate Commerce Commission, and that the plaintiff cannot be heard in a court of equity to complain of a valuation thus fixed with its own consent, to which it took no exception and against which it made no complaint.

14. The defendants deny knowledge or information sufficient to form a belief as to the correctness of the figures set forth by the plaintiff in Exhibit B, as to the market value of its securities.
57 The defendants aver, however, that if these figures are accurate they represent only the temporary and fluctuating prices paid or offered on the market from day to day for the few offerings of such securities for sale on such days. As hereinafter stated in article twenty-three of this answer, such prices established by the offerings and purchases of a few of the plaintiff's securities from day to day in no way measure the price at which such securities would be sold if a purchase of the entire amount of plaintiff's outstanding securities should be attempted. It is denied that the said prices quoted by the plaintiff in its Exhibit B represent or measure the sale value of the plaintiff's entire properties, owned and leased, as such property is sold in the open market, not at forced sale. It is denied that a sale of the total outstanding securities of the plaintiff would constitute a sale of its entire properties or that the ownership of such properties would in any way be changed by such transfer of securities. It is denied that $17,717,000 is the average sale value of the plaintiff's entire properties for any years whatsoever, or that such entire properties could ever have been purchased or can now be purchased for that amount.

15. The defendants deny that they have knowledge or information sufficient to form a belief as to the allegations of paragraph one of article fifteen. They aver, however, that the percentages of plaintiff's properties allocated respectively to Virginia and North Carolina by the Interstate Commerce Commission have no binding effect upon the defendants or upon the State of North Carolina in the assessment and levy of taxes upon the property of the plaintiff in North Carolina. The statutes of North Carolina provide for the ascertainment of the proportion of the plaintiff's property in that State by the use of a main line mileage proportion. The correct main line mileage proportion is alleged by the plaintiff, 12.246 per cent for Virginia and 87.754 per cent for North Carolina. Those proportions were used in fixing the valuation to which the 1920 assessment of plaintiff's property was reduced by the Com-
58 missioner of Revenue, and the final valuation as it stands for 1921 was determined by the application of the said main line proportion to the valuation which the plaintiff itself submitted

to the commissioner of Revenue as being the valuation of its entire properties. The defendants aver that there are elements of property value of the plaintiff in North Carolina, and taxable in that State, which were not taken into consideration by the Interstate Commerce Commission in determining the valuation it placed upon the property of the plaintiff and of the proportions in which it allocated such valuation to Virginia and North Carolina.

16. The defendants admit that the calculations appearing in article sixteen are mathematically accurate, but deny that they have any application to the proper assessment of the plaintiff's property in North Carolina for ad valorem taxation except as hereinbefore stated.

17. The defendants admit the allegations of article seventeen and they aver that, as alleged by the plaintiff in the said article, the valuation of the plaintiff's properties and the allocation thereof to North Carolina were made as required by the provisions of Chapter 38, Public Laws 1921. The defendants further aver that the only authority which the Commissioner of Revenue had in the premises under the laws of North Carolina was to review the assessment for 1920 made by the State Tax Commission, and in the exercise of that authority he did reduce the said 1920 assessment as hereinbefore alleged.

18. The allegations of the first paragraph of article eighteen are admitted, except that before the Commissioner of Revenue certified to the various counties cities, towns, and local tax districts where plaintiff's property is located, their respective part of the value to which he reduced the 1920 assessment of plaintiff's property in North Carolna as hereinbefore stated, he deducted from the said total value in North Carolina of $22,840,932 the value of property of the plaintiff lying off the right of way and assessed by local assessors, and it was only the difference between the said total assessment of
59 $22,840,932 and the said property locally assessed which he thus apportioned and certified to the localities through which the plaintiff's lines run. It is denied that he assessed the value of plaintiff's properties as alleged in that article; he only exercised the right given him by statute to reduce the assessment which the State Tax Commission had made for 1920.

The defendants deny that they have knowledge or information sufficient to form a belief as to the allegations of the second paragraph of article eighteen.

19. The defendants deny the allegations of article nineteen. Further answering they aver that there was no discrimination against the plaintiff and no disproportion in the values fixed upon the plaintiff's property for taxation in North Carolina and upon other property in that State.

As to the allegations of paragraph two of the said article nineteen, the defendants further aver that the plaintiff has no standing in this court to contest the validity and legality of local levies under the Constitution and laws of North Carolina as it has a plain and adequate

remedy at law under Section 7979, Consolidated Statutes of North Carolina against any excessive or illegal rates of taxation by localities. As to the valuation of the plaintiff's property in North Carolina apportioned by the Commissioner of Revenue to the localities in the State and the proportions thereof certified to each such locality, it is denied that there is any illegality or excess as hereinbefore stated.

20. The defendants deny that they have knowledge or information sufficient to form a belief as to the truth and accuracy of the contents of Exhibit C which the plaintiff attaches to the complaint. They aver, however, that these matters were submitted to the Commissioner of Revenue for his consideration upon the plaintiff's application to him to review its 1920 assessment; he gave all these matters due consideration; and upon all the evidence adduced by the plaintiff, upon the arguments made by it, and with its consent, he fixed the valuation to which the said 1920 assessment should be reduced, as hereinbefore alleged.

60 21. The defendants admit the allegations of article twenty-one, except that the inclusion of the franchise therein referred to was only the inclusion of franchise in the sense of intangible property value, and except that the assessment to be made by the State Auditor of a franchise or privilege tax against the plaintiff is made under Section 82 (6½), instead of under Section 82 of Chapter 34, Public Laws 1921 (Revenue Act).

22. The allegations of article twenty-two are denied as therein stated. The defendants aver that the provision of the Constitution of North Carolina is that laws shall be passed taxing the plaintiff's property, among other, according to its true value in money. The Constitution did not require and does not require that the Commissioner of Revenue make any assessment whatsoever. The laws of North Carolina neither require or authorize the Commissioner of Revenue to make any assessment until the year 1924. It is denied that the Machinery Act of 1921 contains a definition of the expression "true value in money" used in the Constitution, and it is denied that the definition of "actual value in money" contained therein applies to any property other than that which is usually sold.

23. Answering the allegations of article twenty-three, the defendants say that it may be true that railroad property is not usually sold as a whole, as alleged by the plaintiff; but they deny that the property of a railroad company is sold or transferred or its ownership changed by a sale of its stocks and bonds. The property is owned by the corporation. A sale of the entire stocks and bonds and other securities of the corporation would have no effect to transfer the title or ownership of the property from the corporation. A sale of the entire securities of such corporation would in no way constitute a transfer of the large intangible property values inhering in the right of that corporation to exist and to do business as such and other intangible values inhering in it, and many of such values and properties could not be sold or transferred at all by the railroad

61 corporation without the consent of the State. Assuming, therefore, that $17,717,000 is the average price at which the total outstanding securities of the plaintiff could be purchased on the market as alleged by the plaintiff, that sum in no way represents the sale price of the total properties of the plaintiff and is in no way the measure of the true value in money of such total properties. It is denied, however, that the total outstanding securities of the plaintiff could at any time have been bought for that price, as hereinbefore stated. The market price fixed on any day or days by the small number of offerings to sell or to buy a relatively small number of such securities in no way measures the price which would have to be paid on the market if an attempt should be made to purchase the total amount of such outstanding securities. The sale value of the total number of such securities cannot, therefore, be measured by the quoted market prices which are based on a very small number of transactions on the day of any one quotation and which would be vastly changed by an increase of the number of such transactions up to and attaining the number of the securities outstanding. It is denied that the Constitution of North Carolina requires that the plaintiff's property in North Carolina be assessed for taxation on the basis of the sale value of the plaintiff's and its lessor companies' stocks and bonds allocated to North Carolina on a mileage or percentage of cost of reproduction proportion, as alleged in the said article twenty-three. It is denied that the Commissioner of Revenue has made an assessment of the plaintiff's property for taxation or that he has any authority to make such assessment at any time prior to 1924 under the laws of this State. He merely exercised his statutory authority to review, upon the petition of the plaintiff, the assessment of the plaintiff's property made for 1920 by the State Tax Commission, and this he did upon the showing made to him by the plaintiff as hereinbefore alleged. The allegations of the last paragraph of article twenty-three are denied.

24. The allegations of article twenty-four are admitted.

25. The allegations of paragraph one of article twenty-five are admitted, except that the defendants have no knowledge or
62 information sufficient to form a belief as to what the plaintiff has filed with the Interstate Commerce Commission, and except that, in addition to the business which the plaintiff in that paragraph alleges it is engaged in, it is further engaged in a large and extensive business of intrastate commerce carried on wholly within the State of North Carolina, and its property in North Carolina is very largely devoted to such intrastate commerce within that State in addition to its interstate commerce. On information and belief the defendants deny the allegations of article twenty-five, second paragraph.

26. Answering the allegations of article twenty-six, the defendants deny that the Amended Interstate Commerce Act requires the plaintiff to carry on intrastate commerce wholly within the State of North Carolina, or that it has any effect to forbid or prevent the plaintiff

from ceasing or desisting from using its property in North Carolina for such intrastate commerce carried on wholly within that State, or that it has any application whatsoever to intrastate commerce wholly within the State.

27. The allegations of article twenty-seven are admitted, except that the inclusion of the franchises of the plaintiff and its lessors therein referred to was only the inclusion of their franchises in the sense of intangible property values.

28. The allegations of the first three paragraphs of article twenty-eight are admitted.

Answering the allegations of the last paragraph of the said article, the defendants aver that the privilege or license tax referred to therein is not for the privilege therein stated, but is for the privilege of carrying on the business of intrastate commerce, wholly within the State of North Carolina, for the privilege of exercising its franchise in this State as provided by the statute under which the said tax is levied.

29. The allegations of article twenty-nine are denied as therein stated. It is admitted that the said franchise or privilege tax is measured by a given per cent of the true and actual value of the entire property of the plaintiff in North Carolina as assessed for ad valorem taxation. As hereinbefore alleged, the franchise
63 or privilege tax imposed upon the plaintiff is for the privilege of exercising its franchise within this State, i. e., for the privilege of engaging in intrastate commerce entirely within this State. It is denied that it violates the Constitution of the United States, the Statutes of the United States, the Fourteenth Amendment to the said Constitution, or the Constitution of North Carolina. It is denied that it destroys the uniformity of taxation required by the said Constitution of North Carolina. The defendants aver that the said tax is valid and legal and is justly due to the State of North Carolina.

30. The allegations of article thirty are denied, except that it is admitted that the said tax, if unpaid, will become a lien on the plaintiff's property, prior to all other liens, and displace pro tanto all prior liens, and that the said lien is valid and will be a lien prior to the lease of the plaintiff's lessors to it, and will, unless the plaintiff pays the said taxes, be grounds for the avoidance of the said leases by the lessors. The defendants aver that not only did the plaintiff have the right under the laws of North Carolina to pay the said taxes and to sue for their recovery, if deemed illegal, but that was the proper procedure which the plaintiff should have pursued, that that procedure constituted an adequate remedy at law, and that no grounds exist for equity jurisdiction in this suit. The defendants further aver that the provisions of Section 82, Chapter 34, Public Laws of 1921, referred to in the said article of the complaint, have no application to corporations carrying on the business of common carriers, and have no application to the plaintiff or its lessors. Such

corporations and the plaintiff are not required to file with the Secretary of State or other officer of North Carolina any authority to do business within the State, and the said statute gives to the Secretary of State no authority to cancel the plaintiff's right to do in North Carolina the business of an interstate carrier in interstate commerce.

31. Answering the allegations of article thirty-one, the defendants deny that the said Section 82 (3½) of the Revenue Act has
64 any application to railroads or to the franchise or privilege taxes on railroads; it is a section which was enacted in 1920, and was specifically limited in its application to taxes on corporations as levied in Section 82 of the Revenue Act of 1919; railroads and the franchise taxes thereon were not included in any part of the said Section 82 of the Revenue Act of 1919; when Section 82 (6½) was inserted in that section in 1920, thus shifting the provision for franchise tax on railroads to this position as a sub-section of the said Section 82 from its former position as Sections 77 and 78 of the said statute, it was not intended to make the said Section 82 (3½) applicable to the said Section 82 (6½); the said Section 82 (3½) does not apply and never has applied to railroads or taxes on railroads, and has no application to the franchise or privilege tax on the plaintiff. It is denied that the figures of $14,040,640 or $13,120,000 or any other figure than that of $22,840,932 is the proper one upon which to base the calculation of the franchise or privilege tax which the plaintiff is due to the State of North Carolina. It is denied that the provisions of Section 82, Chapter 34, Public Laws 1921, make or undertake to make an arbitrary classification among or against corporations. The defendants aver that the placing of railroad corporations in one class and of other corporations in another class, the imposition of a franchise or privilege tax based on the total properties in the State of corporations of the first class, and the imposition of such a tax based on capital stock under the provisions of the said Section 82 upon corporations of the second class, is a reasonable, legitimate, and perfectly justifiable classification, and in no way violates the uniformity provision of the Constitution of North Carolina, and in no way denies to the plaintiff and its lessors the equal protection of the laws, or undertakes to deprive them of their property without due process of law, or violates the Fourteenth Amendment to the Constitution of the United States.

32. The allegations of article thirty-two are denied.

33. The allegations of article thirty-three are denied, ex-
65 cept that it is admitted that the said tax, if not paid, will become a lien upon the plaintiff's property prior to all other liens, and displace pro tanto all prior liens.

Prayer.

Wherefore, the defendants, having fully answered the said complaint filed by the plaintiff in this suit, pray the court that every and singular the prayers of the said complaint be denied and that the same be dismissed at the costs of the plaintiff.

JAMES S. MANNING,
Attorney-General;
FRANK NASH,
Ass't Attorney-General,
Solicitors for the Defendants.

WILLIAM P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

66 A. D. Watts, being duly sworn, says that he is one of the defendants in the above-entitled suit; that he has read the foregoing answer to the complaint, and that it is true of his own knowledge, except as to matters therein stated on information and belief, and as to them he believes it to be true.

A. D. WATTS.

Sworn to and subscribed before me this 30th day of November, 1921.

W. P. STACY,
Associate Justice N. C. Supreme Court.

EXHIBIT "A."

Comparative Statement of Taxable Values for the Years 1919 *and* 1920, *Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral, and Quarry Properties, Average Value per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed with County Supervisors.*

(NOTE.—This statement does not include railroad and public service corporations, banks, and corporate excess assessed by the State Tax Commission.)

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Alamance, 1919.....	257,742	$2,786,845	$10.81	$2,058,055	$6,844,638	$5,532,968	$11,377,606
Alamance, 1920.....	262,836	9,966,036	37.92	7,159,464	24,934,832	10,537,710	35,472,542
Alexander, 1919.....	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920.....	165,761	4,864,885	29.30	681,423	6,527,000	1,956,886	8,483,886
Alleghany, 1919.....	143,300	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920.....	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919.....	328,634	2,663,408	8.11	964,020	4,379,115	3,781,961	8,161,076
Anson, 1920.....	329,715	10,529,114	31.93	2,855,697	13,384,811	6,831,284	20,216,095
Ashe, 1919.....	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920.....	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919.....	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920.....	130,932	3,863,827	29.51	308,197	4,793,754	1,133,928	5,927,682
Beaufort, 1919.....	379,913	3,422,611	9.00	2,534,192	6,365,173	4,231,976	10,597,149
Beaufort, 1920.....	396,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919.....	450,883	3,040,339	6.74	862,130	4,055,859	3,467,887	7,523,746
Bertie, 1920.....	400,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919.....	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
Bladen, 1920.....	524,585	10,092,335	19.24	794,790	11,630,040	3,418,325	15,048,365
Brunswick, 1919.....	476,230	2,406,552	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920.....	502,593	5,477,845	10.90	970,035	7,953,027	2,017,305	9,970,332
Buncombe, 1919.....	312,643	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Buncombe, 1920.....	.....	.....	....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919.....	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920.....	316,304	7,164,477	22.65	1,932,615	11,047,772	4,793,304	15,841,076
Cabarrus, 1919.....	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920.....	222,036	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919.....	227,055	1,809,693	7.97	669,221	3,502,721	2,142,059	5,644,780
Caldwell, 1920.....	258,296	7,792,632	30.17	2,896,422	13,257,242	4,458,020	17,715,262
Camden, 1919.....	145,857	1,083,289	7.42	58,607	1,288,061	672,329	1,960,390
Camden, 1920.....	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919.....	239,554	1,703,631	7.11	1,056,084	2,993,060	1,586,379	4,579,439
Carteret, 1920.....	233,162	7,972,149	34.19	1,650,790	10,405,339	2,940,095	13,345,434
Caswell, 1919.....	262,748	1,686,517	6.42	116,680	1,803,197	2,188,466	3,991,663
Caswell, 1920.....	268,746	8,743,808	32.54	309,340	9,053,148	2,920,697	11,973,845
Catawba, 1919.....	256,932	2,460,000	9.58	1,604,830	4,692,916	5,370,515	10,063,431
Catawba, 1920.....	254,423	12,339,008	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919.....	404,913	3,063,242	7.04	504,565	4,082,437	3,551,644	7,644,081
Chatham, 1920.....	435,773	10,063,328	23.09	1,243,459	11,813,037	4,594,017	16,407,054
Cherokee, 1919.....	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920.....	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919.....	99,967	1,159,788	11.60	582,677	2,007,621	1,778,608	3,786,229
Chowan, 1920.....	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919.....	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920.....	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919.....	278,395	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920.....	277,843	16,422,057	59.11	4,554,698	28,158,726	11,168,356	39,327,082
Columbus, 1919.....	458,631	3,429,666	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920.....	.....	.....	....	.....	15,789,229	6,600,000	22,389,229
Craven, 1919.....	364,212	2,421,364	6.65	4,354,543	7,617,226	4,097,447	11,714,673

Craven, 1920	323,112	15,488,629	47.94	13,256,829	28,745,458	9,352,424	38,097,882
Cumberland, 1919	338,497	3,116,070	9.21	2,513,375	6,348,011	4,990,251	11,338,262
Cumberland, 1920	358,317	12,835,535	35.82	7,393,804	20,522,039	7,567,734	28,089,773
Currituck, 1919	148,426	1,513,584	10.20	.....	1,733,291	705,677	2,438,968
Currituck, 1920	125,080	4,541,124	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1919	208,400	494,859	2.37	100,929	626,963	301,642	928,605
Dare, 1920	.....	.....	....	.....	2,282,743	593,808	2,876,551
Davidson, 1919	35,442	.....	....	.....	6,957,305	3,806,554	10,763,859
Davidson, 1920	355,066	15,295,793	....	6,611,775	30,638,102	9,691,903	40,330,005
Davie, 1919	160,640	1,529,050	9.52	358,529	2,294,469	3,043,548	5,338,017
Davie, 1920	162,798	7,224,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894
68 Duplin, 1920	457,279	23,071,185	50.45	1,100,364	24,211,549	7,285,518	31,497,067
Durham, 1919	178,534	3,569,232	19.99	8,021,399	14,777,121	20,808,813	35,585,934
Durham, 1920	182,608	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	303,562	4,131,420	13.60	3,036,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,690	2,871,776	12.45	9,546,925	14,234,803	22,223,137	36,457,990
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,486	9,172,680
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,700	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,506	8,192,666	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,289	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,986,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	326,225	5,631,242	1,663,562	7,294,894
Graham, 1919	177,414	984,505	5.55	28,350	2,132,988	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,869,736	1,337,240	6,206,976
Granville, 1919	319,516	2,839,542	8.88	1,267,086	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	38.20	3,463,640	16,088,145	6,775,885	22,864,030
Greene, 1919	159,369	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,466	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,587	48,173,459
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,889	5,425,881	10,168,771

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Harnett, 1920.....	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919.....	321,154	3,037,607	9.45	1,779,507	6,120,975	2,762,717	8,883,692
Haywood, 1920.....	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919.....	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920.....	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,423,194
Hertford, 1919.....	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,869
Hertford, 1920.....	201,537	8,738,122	43.36	1,991,046	10,747,168	3,609,665	14,356,833
Hoke, 1919.....	224,703	2,129,757	9.48	300,364	2,653,091	2,020,935	4,674,026
Hoke, 1920.....	221,230	9,967,450	45.05	944,313	11,244,263	2,995,910	14,240,173
Hyde, 1919.....	275,961	1,540,190	5.58	40,230	1,619,250	1,071,108	2,690,358
Hyde, 1920.....	420,604	11,837,110	28.14	443,911	12,281,021	2,035,801	14,316,822
Iredell, 1919.....	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920.....	364,507	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919.....	291,748	1,555,849	5.33	188,013	2,168,624	1,993,645	4,162,269
Jackson, 1920.....	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919.....	481,735	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920.....	498,946	32,620,897	65.38	7,092,072	42,030,148	15,477,315	57,507,463
Jones, 1919.....	291,477	1,666,958	5.72	280,788	1,969,921	1,378,496	3,348,417
Jones, 1920.....	294,634	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919.....	155,733	1,467,390	9.42	926,313	2,735,378	2,144,202	4,679,580
Lee, 1920.....	163,139	6,712,698	41.15	1,019,819	8,706,469	3,371,944	12,078,413
Lenoir, 1919.....	222,375	2,205,289	9.92	2,329,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920.....	239,868	20,753,505	86.52	11,629,585	33,857,010	10,910,400	44,767,410
Lincoln, 1919.....	179,225	2,119,185	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920.....	193,391	7,504,532	38.80	2,009,709	12,584,088	5,417,219	18,001,307
Macon, 1919.....	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920.....	275,716	5,011,838	18.18	189,631	5,201,469	1,330,869	6,532,338
Madison, 1919.....	262,922	2,108,634	8.02	392,267	3,241,392	2,617,167	5,858,559

Madison, 1920	278,983	7,576,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,956,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	44.72	2,699,065	15,613,311	6,799,760	22,413,071
McDowell, 1919	254,751	.....	....	.....	2,675,983	1,042,136	3,718,119
McDowell, 1920	241,210	2,814,834	11.67	1,540,961	8,139,746	3,861,589	12,001,335
Mecklenburg, 1919	313,806	4,032,705	12.85	13,112,770	23,133,825	15,082,064	38,217,889
Mecklenburg, 1920	314,277	14,423,868	67.31	56,054,830	93,500,878	33,585,655	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,203	4,340,208	1,133,117	5,473,325
Montgomery, 1919	288,986	1.766,532	6.11	629,642	2,858,839	2,478,702	5,337,541
Montgomery, 1920	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
Moore, 1919	415,165	3,178,355	7.65	1,871,452	5,434,221	3,005,237	8,439,458
Moore, 1920	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
Nash, 1919	335,415	3,878,799	11.50	3,219,117	7,865,680	8,391,768	16,257,448
Nash, 1920	323,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
New Hanover, 1919	92,962	2,100,440	22.59	10,087,280	14,941,453	5,406,709	20,348,162
New Hanover, 1920	114,132	3,171,311	28.05	14,309,005	37,517,377	12,528,021	50,045,398
Northampton, 1919	318,278	3,705,130	11.64	623,790	4,463,235	4,436,914	8,900,149
Northampton, 1920	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
Onslow, 1919	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
Onslow, 1920	416,808	7,308,697	20.69	992,565	10,807,997	2,756,647	13,564,644
Orange, 1919	241,018	1,951,875	7.78	1,051,230	3,916,209	3,078,757	6,994,966
Orange, 1920	244,404	7,866,281	32.19	2,219,764	10,086,045	6,222,234	16,308,279
69 Pamlico, 1919	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
Pamlico, 1920	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
Pasquotank, 1919	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
Pasquotank, 1920	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
Pender, 1919	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
Pender, 1920	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
Perquimans, 1919	151,630	1,431,991	9.44	473,929	2,009,068	1,684,783	3,693,851
Perquimans, 1920	135,126	4,579,632	33.89	1,035,330	5,739,609	2,359,005	8,098,714
Person, 1919	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
Person, 1920	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,076,795
Pitt, 1919	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
Pitt, 1920	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,391	61,871,989
Polk, 1919	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
Polk, 1920	130,925	3,221,221	24.61	403,878	5,043,541	3,691,363	8,734,904

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Randolph, 1919	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920	489,717	13,352,406	27.27	2,842,531	18,468,305	7,049,532	25,517,837
Richmond, 1919	271,037	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,762
Richmond, 1920	298,155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919	508,290	5,661,400	11.14	2,326,580	9,063,675	8,063,294	17,126,969
Robeson, 1920	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919	345,078	3,213,287	9.08	2,215,162	8,399,673	7,917,904	16,317,477
Rockingham, 1920	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919	530,046	3,850,395	7.26	678,681	4,539,778	4,864,205	9,403,983
Sampson, 1920	578,092	16,169,478	28.00	2,181,805	22,717,990	9,305,331	32,023,240
Scotland, 1919	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471
Stanly, 1919	228,929	1,794,885	7.84	1,109,296	4,727,603	3,983,469	8,711,172
Stanly, 1920	245,668	10,574,057	43.04	3,745,636	21,225,000	10,608,893	31,833,893
Stokes, 1919	274,915	2,364,379	8.60	212,216	2,618,965	3,512,301	6,131,266
Stokes, 1920	286,724	10,328,827	36.02	544,334	10,873,161	4,310,595	15,183,756
Surry, 1919	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845,186	26,374,605
Swain, 1919	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919	197,595	1,518,091	7.68	382,984	2,044,250	1,308,115	3,352,365
Transylvania, 1920	198,554	4,684,341	23.59	462,625	5,304,466	2,597,049	7,901,515
Tyrrell, 1919	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830

Union, 1919	389,203	2,975,210	7.65	1,714,833	5,092,979	6,205,125	11,298,104
Union, 1920	392,429	15,605,830	39.77	4,671,356	21,444,971	10,172,675	31,617,646
Vance, 1919	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,175	10,121,596
Vance, 1920	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,735	26,519,301
Wake, 1919	531,678	5,706,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920	506,877	23,181,356	45.73	25,987,726	53,739,885	18,726,589	73,900,221
Warren, 1919	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919	200,868	1,586,739	7.90	501,569	2,180,780	1,556,516	3,737,296
Washington, 1920	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919	207,881	1,632,998	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920	217,097	6,750,358	31.09	501,234	8,820,897	2,419,708	11,240,605
Wayne, 1919	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920	339,270	27,607,644	81.37	14,860,093	47,323,132	17,666,582	64,989,714
Wilkes, 1919	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920	469,130	7,999,140	17.05	880,767	12,352,003	4,357,959	16,709,962
Wilson, 1919	223,631	2,866,661	12.82	3,109,243	6,323,509	9,005,000	15,328,509
Wilson, 1920	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,562	60,470,862
Yadkin, 1919	211,977	1,999,500	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919	174,935	1,142,880	6.53	83,079	1,335,074	1,204,819	2,539,893
Yancey, 1920	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

70 *Affidavit of F. L. Nicholson.*

Filed Dec. 23, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et al.

F. L. Nicholson, being first duly sworn, deposes and says, that he is Chief Engineer of Norfolk Southern Railroad Company, and as such is familiar with the grades of the line of railroad owned and operated by Norfolk Southern Railroad Company, and the character of its roadbed; that Exhibit "A" attached hereto shows the operating divisions of Norfolk Southern Railroad, its main line and branches, and the maximum and ruling grade on each division of said road and branches, as said grades existed on the first day of May, 1921.

That its main line from Norfolk to Plymouth is laid with 70 pound rail, from Plymouth to Washington is laid with 60 pound rail. There is some 60 pound rail between Washington and Raleigh; that the remainder of the rail between Washington and Charlotte is 70 and 80 pound rail; that all of the branch lines are laid with 60 pound rail or lighter. All of its side tracks are laid with 60 pounds or lighter.

That the maximum gross tonnage which can be hauled over its line West of Raleigh is 500 tons on a through train. That the maximum tonnage from Raleigh to Marsden is 1,000 gross tons, on a through train, Marsden being the station formerly known as Chocowinity. That in the main the roadbed is earth, with, in some places, a reasonable amount of cinder ballast, and some unwashed gravel, with a large percentage of sand, and some slag and cinders, and approximately 6 miles of rock ballast which is located on the Raleigh District; that is East of Raleigh. That the cost of maintenance of a dirt roadbed is quite expensive and as traffic increases expenses of maintenance increase.

That on Norfolk Southern Railroad there is about 15 miles of trestles; that the trestle across the Albemarle Sound is a little over five miles in length, is quite expensive to maintain and was quite costly to build.

That the weight of equipment which Norfolk Southern Railroad Company can with safety permit to be used on its line of railroad in hauling through trains is an engine of 90 tons, gross
71 weight. That with engines of this weight the tonnage which can be moved over the different divisions of its railroad, is as stated above. That before the tonnage which can be moved over its

railroad can be increased it will be necessary for it to increase the weight and carrying capacity of several of its bridges, which can only be done at quite a considerable cost. That before the hauling capacity of the engines of the type and weight now in use can be increased, it will be necessary to expend quite a large sum of money in reducing grades.

F. L. NICHOLSON.

Sworn and subscribed to before me this the 23d day of December, 1921.

[SEAL.]

J. R. PRITCHARD,
Notary Public.

My commission expires 10th day of January, 1925.

EXHIBIT "A."

Norfolk Southern Railroad System.

Maximum and Ruling Grades.

Operating division.	Southbound or westbound.		Northbound or eastbound.	
	Maximum grade.	Ruling grade.	Maximum grade.	Ruling grade.
Electric Division.				
Norfolk to Virginia Beach direct	0.42	0.28	0.41	0.41
Norfolk to Va. Beach via Cape Henry	0.60	0.28	0.75	0.70
Northern Division. Main Line.				
Norfolk to Chocowinity...	0.818	0.80	1.00	1.00
Branches.				
Norfolk to Munden.....	0.42	0.30	0.35	0.35
Euclid to Providence.....	0.10	0.10	0.07	0.07
Suffolk to Edenton.....	1.07	1.07	0.50	0.50
Beckford Jct. to Eliz. City.	0.23	0.17	0.51	0.51
Mackeys to Columbia....	0.29	0.29	0.29	0.29
Mackeys to Belhaven.....	0.49	0.49	0.48	0.48
Pinetown to Bishop Cross.	0.15	0.15	0.41	0.41
Central Division. Main Line.				
Chocowinity to Raleigh...	1.50	1.25	1.50	1.25
Chocowinity to Newbern..	0.62	0.60	0.50	0.50
Goldsboro to Morehead City	0.64	0.54	0.66	0.586

Operating division.	Southbound or westbound. Maximum grade.	Southbound or westbound. Ruling grade.	Northbound or eastbound. Maximum grade.	Northbound or eastbound. Ruling grade.
Branches.				
Newbern to Oriental.....	1.24	1.24	1.06	1.06
Morehead City to Beaufort.	0.40	0.40	0.58	0.58
Western Division.				
Main Line—Raleigh to Charlotte.				
Raleigh to Varina.....	2.71	2.3	2.75	2.29
Varina to Colon.....	1.00	1.00	1.00	1.00
Colon to Mt. Gilead.....	2.91	2.29	2.97	2.97
Mt. Gilead to Charlotte...	1.30	1.30	1.30	1.30
Branches.				
Varina to Fayetteville....	1.98	1.98	2.11	1.80
Aberdeen to Asheboro....	2.75	2.40	3.20	2.58
Candor to Ellerbe.....	2.33	1.80	2.03	1.88
West End to Jackson Spring	2.00	2.00	2.50	2.50
Carthage to Pinehurst....	2.62	2.62	2.57	2.50

72 *Affidavit of Charles M. Weeks.*

Filed Dec. 23rd, 1921.

STATE OF NORTH CAROLINA,
County of Beaufort:

Chas. M. Weeks, being first duly sworn, says that he is a resident of the County of Beaufort and has been a resident of such county for 15 years; that he is familiar with the abstracting of titles and familiar with the examination of deeds and records in the office of the Register of Deeds; that he has made an examination of all deeds recorded in Beaufort County from January 1, 1921, to June 30, 1921, both inclu*d*ive, in which the consideration appears to be more than $1,000.00, and also of the assessed value of real estate embraced in said deeds for the year 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, book and page where recorded, name of the first grantor, name of the first grantee, the consideration for the conveyance, and the assessed value of the said property for the year 1921; that when the considerations shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: By statements from grantor, or from the amount of the Federal Tax imposed and entered on the record, viz: when the con-

sideration or value of the interest in the property conveyed exclusive of the value of any lien or encumbrance thereon exceeds $100, and does not exceed $500, 50 cents, and for each additional $500 or fractional part thereof in exceess of $500, 50 cents, and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total consideration so obtained for all deeds examined and contained in said statement amount to $555,540.00, and the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $393,592.00. Foreclosure sales are so noted excluding these tracts the totals are: Purchase price, $523,090.00, Assessed value, $363,-434.00.

The statement is hereto attached, marked "Exhibit A."

CHAS. M. WEEKS.

Sworn and subscribed to before me this the 16th day of December, 1921.

[SEAL.] ELBERT G. WESTON,

Deputy Clerk Superior Court, Beaufort County, N. C.

Bath Township.

Date of conveyance, month, day, 1921.	Where recorded, book, page.	Grantor.	Grantee.	Consideration paid in 1921.	Assessed value for 1921.
Jan. 14.	227-396	D. A. Taylor	Mary A. Tankard	$4,050	$2,640
Jan. 24.	227-511	Wash. B. L. Co.	Jno. T. Braddy	2,000	1,425 *a*
Jan. 24.	227-515	E. S. McGowan	J. M. Tandard	1,000	338
Jan. 24.	227-607	J. H. Wagner	C. M. Newby et al.	9,408	8,625
Apr. 28.	229-318	H. C. Carter, Jr.	J. A. Hackney	3,150 *b*	(not listed)
May 27.	230-26	W. H. Windley	J. M. Wood	2,600	1,175
May 30.	230-49	D. A. Dowty	Eureka Lbr. Co.	3,250	2,900
June 22.	230-288	J. A. Paul et al.	J. W. Hopkins	1,500	1,250

74

Washington Township.

Jan. 17.	227-427	L. H. Witherington	S. C. Bragaw	$6,000	$3,075
Jan. 19.	225-135	C. S. Doughty	R. H. Hudson	1,000	400
Jan. 20.	227-457	J. H. Bonner	C. H. Conaly	1,000	850
Jan. 24.	225-149	Thos. Jenkins	J. C. Crisp	1,000	1,500
Jan. 31.	225-159	R. J. Dillon	C. L. Carrow	2,500	1,650
Feb. 2.	225-166	J. C. Crisp	E. G. Lilly	6,000	3,750
Feb. 21.	228-173	Wash. B. L. Co.	J. H. Bonner	1,000	400
Feb. 28.	228-255	" " " "	J. G. Bragaw	5,000	2,925

a Consideration obtained from grantor.
b Listed in 1920 at $1,000. Should be listed in 1921 at $750 and included in the total valuation at these figures.

Feb. 28.	228-257	J. G. Bragaw, Jr.	Crowe et al.	2,000	1,875	
Feb. 25.	228-206	Bragaw et al.	Wash. B. L. Co.	3,500	4,390	
Mch. 1.	228-262	W. L. Vaughan, Tr.	J. T. Singleton	3,500	2,550	*a*
Mch. 22.	225-234	A. L. Crisp	W. A. Crisp	3,000	2,025	
Mch. 29.	225-239	F. Sawyer	J. D. Webb	1,560	1,370	
Apr. 7.	229-213	A. D. MacLean	M. U. Hodges	4,500	3,375	
May 19.	229-564	Wash. B. L. Co.	Bettie Lassiter	4,500	3,565	
May 21.	229-572	H. W. Carter	A. L. Bowers	2,000	1,125	
May 21.	230-35	S. B. Baugham	C. L. Carrow	2,600	2,250	
June 16.	230-226	L. J. Jones	Wash. B. L. Co.	1,000	600	
June 18.	225-319	W. W. Leggett	" " " "	1,500	1,902	

75

Long Acre Township.

Jan. 21.	227-472	J. B. Archebell	Wash. B. L. Co.	$9,000	$5,000	
Jan. 29.	225-154	J. H. Satchwell	C. M. Sheppard	4,250	3,000	
Jan. 31.	227-560	Hugh Paul	Earl Harrison	2,000	1,595	
Feb. 1.	227-595	G. Rumley	T. E. Smaw	2,000	1,500	
Feb. 8.	228-41	E. A. Daniel, Tr.	W. A. Blount, Jr.	1,000	525	*b*
Feb. 8.	228-40	" " " "	" " " "	1,800	1,690	*b*
Mch. 16.	228-455	Wash. B. L. Co.	Ernest Ward	3,000	1,710	
May 19.	229-550	J. T. Woolard	J. D. Webb	1,000	1,180	*b*
May 28.	230-51	J. A. Stubbs	Fred Beerman	1,000	1,200	
Apr. 30.	229-368	T. H. Braddy	B. T. Cox	2,100	1,260	*c*

a Purchased at foreclosure sale.
b Purchased at foreclosure mortgage.
c Consideration obtained from Washington Beaufort Land Co. sales agent.

EXHIBIT A—*Continued.*

Belhaven Township.

Date of conveyance, month, day, 1921.	Where recorded, book, page.	Grantor.	Grantee.	Consideration paid in 1921.	Assessed value for 1921.
Jan. 3.	225-110	T. F. Riddick	Lesofsky et al	$2,000	$1,275
Jan. 5.	227-284	J. L. Roper L. Co.	Poco, Guano Co.	11,000	3,700
Jan. 21.	225-151	M. Whitehurst	J. G. Tooly	2,000	1,800
Feb. 14.	225-183	J. G. Tooly	D. L. Starin	3,000	1,315
Feb. 16.	222-195	L. A. Cobb	G. A. Connor	2,000	1,200
Feb. 16.	225-193	G. A. Connor	Geo. Adler, Tr.	2,250	750
Apr. 4.	225-249	L. R. Cutler	Henry Tuten	1,500	565
Apr. 16.	225-263	J. F. Bishop	F. Snyder	5,000	3,750
Apr. 16.	225-264	F. Snyder	G. T. Kirk	12,000	9,750
Apr. 30.	229-424	R. & W. Graves	Jeo. Gilliam	1,200	600
June 11.	230-205	W. O. Lupton	S. W. Clark	4,100	2,625
June 14.	230-210	W. H. Bowen	C. McHarney	1,000	575

Chocowinity Township.

Jan. 22.	225-142	A. S. Cratch	R. T. Cratch	$1,000	$825
Mch. 16.	228-453	J. M. Saunders	H. Hudnell	2,500	2,436
Mch. 19.	228-504	Thad Hodges	Henry Sutton	5,500	4,100
Apr. 29.	229-325	H. C. Carter	Bragaw Fert. Co.	1,000	1,288 A
June 30.	230-344	W. C. Faucette	Wash. B. L. Co.	2,000	1,200

NB.—Lands have been sold which have not been listed for taxation. These lands are not included.

Richland Township.

Jan. 4.	225-111	J. S. Edwards	W. F. Edwards	$2,500	$938
Jan. 7.	225-120	W. T. Lamm	T. M. Arthur	1,300	1,118
Jan. 17.	225-128	J. G. Mayo	H. C. Mayo	1,500	563
Jan. 17.	227-491	J. G. Bragaw	W. T. Litvhfield	1,225	357
Jan. 21.	225-139	L. W. Spruill	G. S. Haddock	1,500	1,119
Jan. 21.	225-138	W. L. Spruill	L. W. Spruill	1,500	563
Jan. 24.	227-524	Wash. B. L. Co.	Geo. W. Clark	2,000	1,875
Feb. 4.	227-641	M. F. Bennett	Theo. Guilford	2,000	1,444
Feb. 19.	225-197	N. L. Simmons	J. W. V. Cordice	10,000	7,500
Feb. 19.	225-198	N. L. Simmons	W. H. Hooker et al	12,000	12,000
Mch. 1.	225-219	R. L. Brantley	Ida P. Brantley	2,500	758
Mch. 18.	228-474	E. A. Daniel, Tr.	B. B. N. Daniel	1,000	5,625 *a*
Apr. 2.	225-243	D. T. Herring	A. C. Austin	3,600	2,074
Jun. 1.	225-306	J. W. Mixon	H. D. Mixon	1,000	113
Jun. 1.	225-307	J. W. Mixon	H. D. Mixon	1,000	488

Pantego Township.

Jan. 7.	227-328	Wash. B. L. Co.	C. L. Carrow	$8,500	$6,000
Jan. 13.	227-369	H. W. Whedbee	J. A. Hackney	43,300	30,000
Feb. 2.	225-164	Wm. P. Brooks	P. D. Evans	1,500	850
Mch. 11.	228-364	Spencer Dev. Co.	F. W. McKinney	56,000	51,840
Mch. 11.	228-365	F. W. McKinney	W. D. Evans	67,000	53,340
Mch. 14.	228-423	Pant. & Bel. R. Co.	D. B. Wilkinson	1,597	1,500
Mch. 28.	225-235	C. Harris	J. B. Dunham	3,300	1,275
Apr. 28.	229-311	W. D. Morrison	J. A. Hackney	21,700	8,150

a Purchased at foreclosure sale.

City of Washington Township.

Date of conveyance, month, day, 1921.	Where recorded, book, page.	Grantor.	Grantee.	Consideration paid in 1921.	Assessed value for 1921.
Jan. 1.	225-108	J. H. Corey	E. O. Tripp	$5,500	$938
Jan. 5.	227-302	H. Windfield	Wash. B. L. Co.	2,800	2,625
Jan. 6.	227-97	Warren, Tr.	M. Knott	18,000	15,125 *a*
Jan. 11.	227-355	Wash. B. L. Co.	Stewart & Bryan	2,700	2,625
Jan. 21.	227-468	Etta C. Carter	J. D. Calais	3,000	2,250
Jan. 28.	227-542	Hassell Sup. Co.	Jankins et al.	30,000	17,005
Jan. 15.	228-91	L. Durand	J. D. Webb	1,500	815
Jan. 1.	227-596	Hassell Sup. Co.	E. G. Mallison	35,000	25,461
Jan. 17.	226-196	Wm. Bragaw	W. H. Lancaster	3,000	2,250
Jan. 23.	228-193	J. H. Clark	J. D. Calais	1,000	750
Apr. 19.	229-225	C. L. Carrow	Mary E. Elliott	4,200	2,500
May 2.	225-275	J. H. Ecklin	M. D. Hill	1,000	1,125
May 11.	229-467	C. G. Morris	E. J. Trickett	21,000	8,850
May 19.	229-559	J. L. Alden	Annie Sawyer	1,000	1,313
June 3.	230-102	Z. N. Leggett	E. Brayn	4,000	1,594
June 3.	230-104	Z. N. Leggett	E. Brayn	4,000	2,288
June 3.	230-106	Z. N. Leggett	W. L. Jones	4,000	1,594

a Purchased at foreclosure sale.

78 *Affidavit of J. C. Nelms, Jr.*

Filed Dec. 24, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS et al.

J. C. Nelms, Jr., being first duly sworn, deposes and says:

1. That he is now General Auditor of Norfolk Southern Railroad Company, complainant in this action, and has been such since April, 1915; that as such he has charge of the books of accounts of Norfolk Southern Railroad Company. That after United States Railroad Administration took control of the line of railroad owned and operated by Norfolk Southern Railroad Company under the Federal Control Act, he retained his position as General Auditor with the Company, except that he was Federal Auditor until November, 1918, when the Federal Administration directed the officers of railroad companies to be separated from those representing the Government.

From the records of the Company and the reports made by it to the Interstate Commerce Commission from time to time, as required by law, after the Government had taken possession and control of the lines of railroad of the country, in order that the amount of compensation for use of Norfolk Southern Railroad Company's property could be ascertained, in accordance with the terms of the Federal Control Act, he prepared or caused to be prepared in his office statement showing the amount of the average annual railway operating income of Norfolk Southern Railroad Company for the three years ended June 30, 1917, in the computation of such, income debits and credits arising from the accounts called in the monthly reports of the Interstate Commerce Commission, "equipment rents" and "joint facilities rents" were included. These reports were duly submitted to the Interstate Commerce Commission and by them checked and after making such corrections and changes as appeared to the Interstate Commerce Commission to be proper under the said Federal control act, the Interstate Commerce Commission certified to

79 the President that the average annual railway operating income of Norfolk Southern Railroad Company for the three years ended June 30, 1917, was $1,152,879.64, that the Interstate Commerce Commission certified to the President as proper compensation for the use of the lines of railroad operated by Norfolk Southern Railroad Company during the period of Federal control to be at the rate of $1,152,879.64 per annum. That the railway operating

income of Norfolk Southern Railroad Company from July 1, 1914, to June 30, 1917, and from January 1, 1918, to August 31, 1920, was at the rate of $274,814.75 per annum. That the railway operating income of Norfolk Southern Railroad Company for the six months ended December 31, 1917, was at the rate of $1,226,520.36 per annum. That in the above mentioned references to railway operating income, it is the railway operating income fixed by the Interstate Commerce Commission in accordance with the Federal Control Act and computed in that way.

That Norfolk Southern Railroad lines were operated by United States Railroad Administration from the first day of January, 1918, to the 29th day of February, 1920, both inclusive. That during that period the property was unable to earn, or failed to earn for the Government the amount paid as just compensation for the use thereof. From the first day of March, 1920, to the 31st day of August, 1920, both inclusive, said lines of railroad were operated by Norfolk Southern Railroad Company, and under the terms of the Transportation Act of 1920, that company having accepted the benefits and provisions of the guaranty contained in section 209 thereof. That the company operating under the terms of
80 said act was unable to earn the amount guaranteed to it by $1,311,700.63, and the Government, in settlement between it and the Norfolk Southern Railroad Company paid to Norfolk Southern Railroad Company the aforesaid sum as the amount necessary to make up the deficit from operation, and the amount guaranteed to it under the terms and provisions of section 209 of the Transportation Act of 1920.

That Norfolk Southern Railroad Company has been operating its line of railroad from the first day of September, 1920, to the present time without the benefit of any guaranty and during that time it has been unable to earn a sufficient sum to pay the rental for its leased roads and interest upon its bonded debt. That for the ten months of the year 1921, its railway operating income, as that term is used in the accounts required to be kept by the Interstate Commerce Commission, has been $516,028.00.

And that the amount left to the company for the 10 months' operation, with which to pay rental of leased roads, and interest upon its bonded debt and other miscellaneous income charges, has been for said period of 10 months the sum of $516,028.00, which is not sufficient to pay the rental of leased roads, and interest upon its indebtedness, and other miscellaneous charges to income.

That immediately after what is commonly known as the Adamson Law, or the 8 hour law, passed by Congress in 1916, became effective there was a very material increase in the cost of operation of Norfolk Southern Railroad, a large part of which could be
81 traced directly to the passage of that Act. That during the period of Federal control, the rate of pay of all labor employed on the railroad was materially increased and this increase resulted in a very material increase in the cost of operation and under

section 312 of the Transportation Act carriers were prohibited from reducing the pay of employees or subordinate officials at any time prior to September 1, 1920, below the scale in force at the termination of Federal control. That during the year 1920 and as of July 1, 1920, the Labor Board which was created by the Transportation Act of 1920 issued an order materially increasing the scale of pay of substantially all employees and subordinate officials of railroads, including Norfolk Southern, and this increase in the scale of pay resulted in a very material increase in the cost of operation. In addition thereto, during the period of Federal control, the rules and working conditions governing the employment of labor were materially changed and these changes added materially to the cost of operation. That under the Transportation Act of 1920 Norfolk Southern Railroad Company, as a common carrier by railroad subject to the Interstate Commerce Act, is prohibited from reducing its rate of pay or changing rules and working conditions of its employees without their consent or without the prior order of the Labor Board. That the net result of the Adamson or Eight Hour Law, and the Transportation Act of 1920, has been to very materially increase the cost of operation of the line of railroad operated by the Norfolk Southern Railroad Company, and without the consent of its employees, or lacking their consent without the prior approval and order of the Labor Board, reducing the scale of pay of
82 employees, it is not feasible or practicable to materially reduce the operating expenses of Norfolk Southern Railroad Company from the labor standpoint. That the labor cost of operating the line of railroad is in the best judgment of affiant about 62% of the total operating expenses.

That affiant prepared the table attached to the bill marked Exhibit C, and that the same is a true and correct statement taken from the books of the United States Railroad Administration and Norfolk Southern Railroad Company and shows the results of the operations of the property of Norfolk Southern Railroad Company for and during the period of time set out in said table. That owing to inability to obtain money from operations with which to meet its fixed charges, Norfolk Southern Railroad Company has since September 1, 1920, been unable to expend the amounts which it could properly have expended in the maintenance of its equipment and roadbed. That while its roadbed has been kept in a safe condition, Norfolk Southern Railroad Company has not been able to expend thereon in maintenance that sum which in the best interest of the company and the best interest of the public should have been spent. That it has been unable for lack of funds to expend in the maintenance of its equipment that amount of money which it could properly have spent in order to best serve the public and to produce the best operating results. That all of the mortgages on property of Norfolk Southern Railroad Company are closed mortgages except its First and Refunding Mortgage, bearing date February 1, 1911. That the bonds issued under that mortgage have sold on the open market in New York as low as 40 cents on the dollar. That they are

now quoted, according to the quotations last seen by affiant at between 50 and 55 cents on the dollar.

J. C. NELMS, JR.

Sworn and subscribed to before me, this 22d day of December, 1921.

[SEAL.] GILBERT C. REVEILLE,
Notary Public.

My commission expires 31st day of August, 1924.

83 *Affidavit of C. P. Dugan.*

Filed Dec. 24, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS et al.

C. P. Dugan, being first duly sworn, deposes and says, that he is Superintendent of Transportation of Norfolk Southern Railroad Company, and as such has charge of the car records of that Company; that in May and June, 1921, Norfolk Southern Railroad Company owned, including those under lease from Atlantic & North Carolina Railroad Company, 3529 revenue freight cars; that over 60% of these cars were of 60,000 pounds capacity; that on May 2, 1921, the company had 628 bad order cars. This number gradually increased up to June 30, 1921, on which date it had on hand 688 bad order cars; that since June, 1921, the bad order cars have increased until as of December 17, 1921, there were on hand 887 bad order cars. That after the passage of the Transportation Act of 1920, Norfolk Southern Railroad Company made application to the Interstate Commerce Commission for the loan of $375,000.00 under the provisions of that Act for the purpose of rebuilding with steel center sills and underframes 400 bad order cars, many of which had been on the side tracks of the company for practically the entire period of Federal control; that the Interstate Commerce Commission approved the loan of $375,000.00, upon condition that Norfolk Southern Railroad Company would do certain things, which up to the present time, by reason of statutory regulations it has been unable to do and perform, and it has been unable to obtain the money from any other sources to rebuild and rehabilitate its cars; that during the period of Federal control its cars were scattered widely over

the United States, and passed into the hands of a great many carriers and these cars have been coming back in varying degrees of frequency from shortly after the end of Federal control until the present time. When Norfolk Southern cars are return by other lines, it is found that a great many of them are in bad condition and need heavy repairs. Under conditions existing in the country
84 Norfolk Southern Railroad Company has been unable at any time during the past 20 months to obtain, either from operation or otherwise, the money necessary to put its cars in repair. This necessitates their being laid up on the side tracks where they rapidly depreciate in value. The longer these cars stand on the side track unused and unrepaired, the greater the deterioration and the more costly they are to repair. By reason of the inability of Norfolk Southern to expend the amount of money necessary to put its bad order cars in condition for interchange service, the car hire, or amount paid to other roads for rent of equipment is gradually increasing and will continue to do so until more cars can be put in the service or the business falls off so that there will be less use for the cars.

That Norfolk Southern Railroad Company, in addition to keeping repaired so that they may be interchanged, the foreign cars on its lines, has for some time past been able to make light repairs to about thirty of its own freight cars per day, and with this the number of bad order cars has increased about two hundred since June 1st. That owing to the economies which Norfolk Southern Railroad Company, together with many other railroad companies in the country, have been compelled to put in force, its revenue freight cars, serviceable for interchange conditions, have been and are gradually diminishing and unless it can find the means with which to rehabilitate many of its cars and repair those not needing complete rehabilitation this condition will continue to grow worse.

Norfolk Southern Railroad Company owned, as of May and June 1, 1921, including those leased from Atlantic & North Car-
85 olina Railroad Company, 99 passenger train cars, that is cars used in passenger trains; in addition thereto it owned some second hand tourist cars, which it bought for the purpose of converting them into passenger cars as rapidly as it could find the money to pay for the work. Some, since June 1st, have been converted and put in service, the others are still unconverted. Under the rules established for the interchange of cars between lines of railroad companies, certain classes of repairs have to be done on cars, although they may not be in the possession of the owner. Owing to the condition of Norfolk Southern Railroad Company's freight equipment, the bills which it has to pay foreign lines for repairs to its cars are very heavy, and run about $6,000 or $7,000 a month in excess of the amount that foreign lines pay Norfolk Southern Railroad Company for repairs to their cars.

C. P. DUGAN.

Sworn and subscribed to before me this the 23rd day of December, 1921.

J. R. PRITCHARD,
Notary Public.

My commission expires on the 10th day of January, 1925.
[SEAL.]

86 *Additional Affidavit of J. C. Nelms, Jr.*

Filed Jan. 21, 1922.

In the United States District Court, Eastern District of North Carolina.

NORFOLK SOUTHERN RAILROAD COMPANY
vs.
A. D. WATTS et al.

J. C. Nelms, Jr., being duly sworn, says that he is General Auditor of Norfolk Southern Railroad Company, and the information in the tabulation attached hereto is true and correct and taken from the original affidavits filed in the United States District Court in the case of Norfolk Southern Railroad Company vs. A. D. Watts, et al.

J. C. NELMS.

Sworn and subscribed to before me this 19 day of January, 1922.
GILBERT REEVEILLE,
Notary Public.

87 Name of county.	Number conveyances.	Consideration for conveyance.	Assessed value.	Percentage of assessed value to sales value.
Currituck	28	$108,781.86	$72,210.32	66.3
Camden	15	107,200.00	47,024.00	43.86
Pasquotank	61	188,681.15	126,778.00	66
Perquimans	27	95,002.00	87,775.00	92.3
Chowan	27	106,545.00	97,300.00	91.3
Gates	40	133,575.00	84,760.00	63.4
Tyrrell	15	48,603.33	34,232.00	70.4
Beaufort	94	555,540.00	393,592.00	75
Carteret	32	121,433.00	119,900.00	98.7
Jones	25	204,486.00	117,763.00	57.5
Lenoir	58	212,579.06	191,465.00	90
Wayne	23	129,020.00	82,330.00	63.8
Hyde	27	84,712.50	60,905.00	70.7
Greene	..	.....	.....	....
Dare	..	.....	.....	....
Pamlico	16	32,450.00	15,556.00	47.9
Stanly	68	151,374.00	119,256.00	78.7
Montgomery	26	244,638.00	158,764.00	70
Cabarrus	52	146,619.00	90,602.00	61.7
Total	634	$2,671,239.90	$1,900,212.32	71.1

88

Affidavit of J. C. O'Brien.

Filed Jan. 24, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS et al.

C. J. O'Brien, being duly sworn, says that he has brought together the information shown in the attached affidavits, for the several Counties of North Carolina, set opposite the name of each affiant, and finds that said affidavits show:

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Alamance	B. M. Rogers	$517,606.00	$355,184.00	68.62
Alexander	J. P. Crouch	50,175.00	24,860.00	49.54
Alleghany	E. L. McMillan	97,167.56	70,088.00	72.13
Anson	Fred J. Coxe	111,603.42	67,721.00	60.68
Ashe	C. W. Higgins	225,374.89	122,591.00	54.39
Avery	Avery Goodman	63,480.50	52,975.00	83.45
Beaufort	Chas. M. Weeks	555,540.00	393,592.00	70.84
Bertie	P. T. Perry	304,883.80	153,828.00	50.46
Bladen	D. B. Johnson	131,930.00	123,267.00	93.40
Brunswick	L. J. Poisson	61,610.00	44,600.00	72.39
Buncombe	George H. Wright	3,261,452.00	2,255,839.00	69.16
Burke	George H. Battle	96,380.00	51,268.00	53.19
89				
Cabarrus	John H. Oglesby	146,619.00	90,602.00	61.78
Caldwell	John M. Crisp	85,905.00	74,960.00	87.26
Camden	P. G. Sawyer and M. B. Simpson	107,200.00	47,024.00	43.85
Carteret	D. W. Morton	121,433.00	119,800.00	98.66
Caswell	E. F. Upchurch	92,506.00	56,660.00	61.25
Catawba	Klutz B. Clippard	369,116.00	211,231.00	57.22
Chatham	Jas. L. Griffin	99,445.00	58,594.00	58.90
Cherokee	W. M. West	128,522.00	84,042.00	65.39
Chowan	R. W. Boyce	106,545.00	97,300.00	91.32
Clay	Wayne L. Swanson	54,550.00	39,010.00	71.51
Cleveland	R. L. Weathers	428,109.35	301,044.00	70.30

Columbus	L. V. Grady	228,820.00	167,222.00	73.08
Craven	Wm. Dunn, Jr.	379,831.66	310,610.00	81.77
Cumberland	E. L. Hall	414,122.03	270,615.00	65.35
Currituck	P. G. Sawyer and M. B. Simpson	108,781.86	72,210.32	66.37
Dare				
Davidson				
Davie	W. H. Phillips	478,760.00	258,653.00	54.02
Duplin	J. S. Daniel	35,438.00	28,308.00	79.88
Durham	H. L. Stevens	87,165.00	62,250.00	71.41
Edgecombe	M. G. Markham	492,250.00	336,532.00	68.40
Forsyth	J. L. Bridgers	209,382.24	133,055.00	63.00
Franklin	Phillip L. Kainer, R. G. Parker, C. A. Vogler	2,139,311.57	1,526,368.70	71.34
Gaston	Hugh W. Perry	75,458.29	43,472.00	57.60
Gates	Cecil C. Cornwell	202,167.00	136,974.00	67.70
Graham	P. L. Hoffler	133,575.00	84,760.00	63.45
Granville	A. H. Eller	39,904.50	17,486.00	43.82
Greene	C. G. Powell	272,387.87	141,930.00	52.10
Guilford				
Halifax	John H. McAdoo	2,337,104.00	1,627,041.00	69.61
Harnett	R. C. Dunn	237,303.50	125,777.50	54.69
Haywood	J. C. Clifford	116,685.00	70,045.00	60.03
Henderson	T. Troy Wyche	221,720.83	129,342.00	58.33
Hertford	Mrs. J. E. Bishop	678,562.05	591,194.05	87.12
Hoke	J. E. Vann	100,226.00	67,268.00	67.12
Hyde	Oscar Leach	24,042.25	22,325.00	92.85
Iredell	Elmo Mann	84,712.50	60,905.00	71.90
Jackson	John L. Millholland	224,435.00	155,250.00	69.17
	Raymond R. Nicholson	190,967.00	44,125.00	23.10

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Johnston	E. F. Ward	382,507.56	224,047.25	58.57
Jones	John R. Barker	204,486.00	117,763.00	57.58
Lee	D. E. McIver	90,027.00	74,457.00	82.70
Lenoir	C. W. Pridgen	212,579.06	191,465.00	90.06
Lincoln	John E. Hoover	217,764.00	111,146.00	52.40
Macon	J. F. Ray	32,275.00	19,775.00	61.26
Madison	J. Will Roberts	29,780.00	18,327.00	61.54
Martin	H. W. Stubbs	623,064.03	238,679.00	38.31
McDowell	H. R. Ledbetter	93,675.00	54,480.00	58.16
Mecklenburg	Geo. M. Phifer	3,169,115.25	1,815,279.50	57.28
Mitchell	J. D. Pannell	93,991.00	65,056.00	69.21
Montgomery	W. L. Wright	244,638.00	158,764.00	64.89
Moore	N. A. McKeithen	210,678.00	119,410.00	56.70
Nash	J. P. Bunn	361,740.43	165,891.00	45.85
New Hanover	Wm. L. Smith	989,207.00	866,550.00	87.60
Northampton	P. F. Calvert	54,848.00	48,620.00	88.64
Onslow	Frank Thompson	82,418.00	75,475.00	91.46
Orange	J. F. McAdams	162,269.00	120,706.00	74.38
Pamlico	G. V. Rawls	41,150.00	15,556.00	37.80
Pasquotank	P. G. Sawyer and M. B. Simpson	188,681.15	126,778.00	67.14
Pender	J. T. Bland	90,000.00	64,885.00	72.90
Perquimans	W. F. C. Edwards	95,002.00	87,775.00	92.39
Person	A. P. Clayton	59,124.00	45,570.00	77.07

Pitt	C. F. Manning — J. C. Gaskins	459,976.50	383,157.00	83.00
Polk	W. C. Hague	40,743.20	28,929.00	71.00
Randolph	John M. Brittian	235,365.00	135,150.00	57.42
Richmond	H. V. Guthrie	80,070.00	55,610.00	69.40
Robeson	Wade Wishart	119,272.00	68,004.00	57.00
Rockingham	Nurna Winstead	815,821.00	524,584.00	64.30
Rowan	Max L. Barker	179,097.90	130,391.75	65.52
Rutherford	M. T. Wilkie	106,706.93	79,672.00	74.70
Sampson	H. A. Grady	222,556.00	110,837.00	49.80
Scotland	T. J. Dunn	61,200.00	39,561.00	64.64
91				
Stanley	George P. Palmer	151,374.00	119,256.00	78.78
Stokes	N. Earl Wall	169,465.00	100,339.00	59.20
Surry	B. F. Folger	198,624.00	108,860.00	54.80
Swain	D. E. Nichols	55,435.00	40,374.00	72.83
Transylvania	Roland Owen	39,950.00	24,870.00	62.25
Tyrell	A. Melson	48,603.33	34,232.00	70.41
Union	M. L. Flow	473,906.00	331,924.00	70.00
Vance	Robert G. Kittrell	500,066.00	307,311.00	61.50
Wake	H. E. Glenn	810,175.00	716,648.00	88.45
Warren	E. C. Price	131,427.33	69,200.00	52.60
Washington	Z. V. Norman	112,102.50	58,230.50	51.95
Watauga	T. E. Bingham	207,632.00	133,018.00	64.07
Wayne	D. E. Grantham	244,675.00	87,851.00	35.91
Wilkes	Frances Hendren	113,512.40	66,214.00	58.33
Wilson	R. L. Brinkley	304,964.00	191,107.00	63.44

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Yadkin	John D. Reece	71,495.00	48,128.50	67.31
Yancey	C. C. Caraway	194,974.00	173,972.00	89.22
Total		$30,598,475.24	$20,373,684.07	66.58

C. J. O'BRIEN.

Subscribed and sworn to before me, this 24th day of January, 1922.
[SEAL.]

R. L. BLAYLOCK,
Clerk U. S. Dist Court.

92 *Affidavit of M. S. Hawkins.*

Filed Jan. 30, 1922.

In the United States District Court for the Eastern District of North Carolina.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS et als.

M. S. Hawkins, being first duly sworn, says:

That he is Secretary of Norfolk Southern Railroad Company, and also Assistant to the President; that he has occupied those positions with said Company from March 1, 1920, down to the present time; that immediately preceding March 1, 1920, he was Federal Manager of Norfolk Southern Railroad Company; that his office is charged with the duty of looking after the listing of the property of said railroad company, and of handling its tax matters.

That no request was made upon the Norfolk Southern Railroad Company by the State Tax Commission of North Carolina during the year 1920 or prior to or since that time for specific or detailed information as to the cost of reproduction of the properties of Norfolk Southern Railroad Company, in the State of North Carolina,
93 so far as affiant ever heard; that a careful search of the files of the company fail to disclose any such request or any response. That on the contrary, as affiant is informed and believes, and so avers, at that time the State Corporation Commission, which under the laws of the State of North Carolina, as affiant is advised, constituted and was the State Tax Commission, had in its possession and under its control full and complete information as to the cost of reproduction new, and cost of reproduction less depreciation of the line of railroad owned by Norfolk Southern Railroad Company and its lessor companies, Atlantic & North Carolina Railroad Company and Carthage & Pinehurst Railroad Company.

That affiant is informed, believes and avers that on or about July, 1919, the Interstate Commerce Commission served on the Governor of North Carolina, and the State Corporation Commission of North Carolina, its estimate of the cost of reproducing new and cost of reproducing the properties of the said three companies less depreciation.

That under the law under which said estimate was made any of the parties had thirty days from August 22, 1919, in which to file objections to these estimates.

That as affiant is informed, believes and alleges, neither the State of North Carolina, or the State Corporation Commission filed any exceptions thereto.

That said report and estimate showed the court of reproduction new and cost of reproduction less depreciation of the entire
94 system, and of the part in North Carolina, and in Virginia, as follows:

			Cost of reproduction. New.	Cost of reproduction. Less depreciation.
State of Virginia—				
Total owned and used (*a*)			$3,551,726	$2,803,061
State of North Carolina—				
Total owned and used			13,695,085	11,801,522
Used, but not owned—				
Leased from the Atlantic	$2,529,181	$1,942,776		
Leased from the Carthage	133,123	111,789		
Total leased			2,662,304	2,054,565
Total used, North Carolina			$16,357,389	$13,856,087

Note *a* includes equipment assigned to the electric division between Norfolk and Virginia Coast.

Not Allocated to States.

	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
Wholly owned and used equipment (including interest attaching to same), all except electric division	$4,158,258	$3,135,856
Owned but not used:		
Leased to Carolina Railroad	9,616	6,384

The above amounts classified in conformity with the classification of expenditures for road and equipments as prescribed are shown in the summary sheets which are a part of this report as Appendix A.

The present value of the lands owned or used by the Norfolk Southern are as follows:

	Acres.	Present value.
Owned by the Norfolk Southern:		
Urban	312.256	$1,391,324.26
Rural	9,148.889	1,027,374.05
Total owned	9,461.145	$2,418,698.31
Used by the Norfolk Southern, but owned by the Atlantic:		
Urban	122.672	$501,373.03
Rural	1,129.070	81,899.30
Total	1,251.742	$583,272.33
The Carthage:		
Rural only	158.769	8,917.64
Other than common carrier	0.983	464.50

95 All of the lands used but not owned are within the State of North Carolina. The owned lands are divided between Virginia and North Carolina as follows:

State.	Acres.	Present value.
Virginia—		
Urban	58.173	$614,380.50
Rural	969.883	272,053.11
Total	1,028.056	$886,433.61
North Carolina—		
Urban	254.083	776,943.76
Rural	8,179.006	755,320.94
Total	8,433.089	$1,532,264.70

Norfolk Southern Railroad Company owns non-carrier lands of the following amounts and values, including the value of improvements owned by the carrier:

State.	Acres.	Present value.
Virginia—		
Urban	37.125	$64,103.83
Rural	303.161	69,756.47
Total	340.286	$133,860.30
North Carolina—		
Urban	83.504	$175,281.86
Rural	1,756.592	128,999.35
Total	1,840.096	$304,281.21
Total Urban	120.629	$239,385.69
Total Rural	2,059.753	198,755.82
Grand Total	2,180.382	$438,141.51

That the said report of the Interstate Commerce Commission showed the following:

"Investment in Road and Equipment.—The investment in road and equipment is stated in the books of the carrier to be $28,333,-531.03 which included:

Cost of road purchased		$21,889,341.21
The Railway Company	$18,522,755.79	
The Raleigh	3,366,585.42	
Completion of roads purchased		3,485,359.10
Reconstruction of roads purchased		519,150.16
Additions and betterments		2,439,680.56
Total		$28,333,531.03

96 An examination of the available records of the present corporation and the numerous predecessors discloses that the statement of investment is too large. However, the accounts have not been so kept as to permit the determination of what the investment was, except upon the basis of certain assumptions. The best result obtainable is only a maximum amount. It is not a figure that can be taken as the actual investment in road and equipment; for, in view of the state of the records, as a whole, that fact can not be determined. What has been found is reported as the best information available on the question of the actual investment, and is believed to show the upper limit within which the unascertainable actual investment lies.

Summaries of the results obtained as to this maximum figure are as follows:

Cost of roads purchased		$15,506,008.20
The Raleigh	$1,800,980.66	
The Railway Company	13,705,037.54	
Road extensions		3,300,711.56
Reconstruction of road purchased		519,150.16
Additions and betterments		1,730,819.55
Total		$21,056,699.47

The distribution of this amount by primary accounts is shown in Exhibit A to Appendix 2.

The difference $7,276,831.56, between the above maximum amount and the carrier's book figures is explained in detail in Appendix 2 and Exhibits B and C thereto. Also in that appendix will be found an explanation of the character of the records of investment and of the adjustments therein necessary to reduce the inaccuracies to the lowest degree possible.

97 In addition to the investment in its own carrier property, the Norfolk Southern uses under lease for its carrier purposes other property, the investment in which has been found to be not in excess of amounts as follows:

Improvements on leased property	$447,997.45
The Atlantic	1,943,945.28
The Carthage	106,900.00
Total	$2,498,842.73

which, added to the maximum of its own property, gives a total of $23,555,542.20, as the maximum figure for the investment in all property used by the Norfolk Southern for its purposes as a common carrier.

The amount of the improvements on leased property is shown distributed by primary accounts in "Exhibit A to Appendix 2."

Affiant is informed, believes and alleges that all of the foregoing facts and figures were well known to the State Tax Commission (Cor-

poration Commission) or should have been known as they had as a part of their records the foregoing report.

Norfolk Southern Railroad Company did not at any time represent to the State Tax Commission of North Carolina that the above mentioned figures did not represent the cost of reproduction new or cost of reproduction less depreciation of its properties.

The correspondence attached marked Exhibit D passed between affiant and J. S. Griffin.

98 Norfolk Southern Railroad Company was required to and did file with the State Tax Commission a detailed statement showing all of its property and the number of shares of stock outstanding—the par value thereof and the market value—the amount and market of its outstanding bonds, and other funded indebtedness.

That the report showed 160,000 shares of stock outstanding of the par value of $16,000,000.00 and of the market value of $2,560,000.00, and its bonds and other funded debt outstanding of the par value of $17,754,000.00 and actual or market value of $11,891,525.00 for Norfolk Southern Railroad Company.

Norfolk Southern Railroad Company, nor anyone for it, ever insisted or claimed that the proportion of its total investment account which its main line mileage within the State of North Carolina bore to its total main line mileage would give a fair value of its property in North Carolina, but on the contrary has always insisted that its property should be valued according to the rule laid down by the Constitution of the State at its true value in money.

That while it may be true that the price of labor and materials had in 1919 and 1920 increased over the price of similar materials in 1914, the value of the railroad property of Norfolk Southern Railroad Company and its leased lines had not increased but on the contrary had decreased in value if anything, for that as affiant is advised, under the Interstate Commerce Act, the cost of reproduction new and cost of reproduction less depreciation of Norfolk Southern and its lessor companies had been ascertained by the Inter-

99 state Commerce Commission, and this had been reported under the law to the Attorney General of the United States, and the Governors and State Corporation Commissions of Virginia and North Carolina, in which said property is and was situate, and they had not objected thereto, and as affiant is informed and believes the rates of fares and charges which Norfolk Southern Railroad Company could charge was fixed by law, and the amount of its earnings which it could retain was fixed by law, and the rate of pay which it must pay for labor was fixed by law, and the scale of charges and amounts of earnings which it could retain was fixed upon the cost of reproduction, less depreciation, as reported by the Interstate Commerce Commission, all of which facts and matters, as affiant is informed and believes, were known to the State Tax Commission at the time it made the assessment, and this valuation could not be changed except by the Interstate Commerce Commission, and they had made no change since 1914 and have made none since.

Affiant is advised that under the law Norfolk Southern Railroad Company may not abandon the operation of its property without

leave first had and obtained from the United States, and says that where property is required by law to be devoted to a particular use, the value of the property has a direct and positive connection to the amount which the owner may receive from the use of such property after paying operating expenses, repairs, maintenance and taxes; that Norfolk Southern Railroad Company is required by law to make report of its operations to the Corporation Commission of North Carolina (State Tax Commission) and that the members of the State Tax Commission knew or should have known from
100 such reports that the net operating railway revenue of Norfolk Southern Railroad Company had materially declined in 1919 and 1920 from what it was in 1914, 1915 and 1916.

The State Tax Commission (Corporation Commission) knew at the time they made their assessment in 1920 what the gross earnings, operating expenses, and net operating railway income were, both before and after taxes had been paid, for the past 8 years, and knew or should have known that the net operating railway income of Norfolk Southern Railroad Company had decreased each year from 1916 to the time of valuation.

This affiant is informed and believes that the report of the State Tax Commission to the Governor of North Carolina, bearing date August 10, 1920, which was transmitted by the Governor to the General Assembly, a copy of which is hereto attached marked A, sets out the sole and only basis on which railroad property in the State of North Carolina was valued and sets forth the reasons for such action, and that the method of valuation set out in said report as to railroads was intentional as therein set out and for the purpose of increasing the assessment of railroad property above what the Commission in its report stated had been considered the true value of such property.

This affiant says that the State Tax Commission of North Carolina at the time it made its assessment of Norfolk Southern Railroad Company's property had before it the actual cost of reproduction new less depreciation, brought down to that date, of all the prop-
101 erty of Norfolk Southern Railroad Company, and its lessor lines and a copy thereof is set out in Exhibit B hereto attached.

That on or about May 20, 1920, Norfolk Southern Railroad Company, acting under the laws of North Carolina, made its annual report to the Corporation Commission, for the year ended December 31, 1919; that this report showed that the "Account No. 701, Investment in roadway property and equipment" as it is designated in the forms prepared and sent out by said Commission, was $30,777,491.88 including improvements on leased roads.

That the State Tax Commission assessed for taxation for the year 1920 the property of Norfolk Southern Railroad Company, and its two lessor companies' property at $27,023,462.00, which is slightly more than 87.734% of said investment account, said 87.734% of $30,777,491.88 being $27,002,324.00.

That in 1921 Norfolk Southern Railroad Company filed with State Tax Commission (Commissioner of Revenue) a petition to re-

view and reduce the assessed value of its properties. A copy of the petition and papers are attached, marked "C."

As of June 11, 1921, the Interstate Commerce Commission made its final report of the value of Norfolk Southern Railroad Company's owned and leased lines, which was as follows:

"Final Value.—After careful consideration of all the facts contained in the tentative, and supplemental tentative valuations, including the excess cost of carrier lands, appreciation, de-
102 preciation, going concern value, working capital, including materials and supplies, and all other matters which appear to have a bearing upon the values here reported, the values, as that term is used in the Interstate Commerce Act, of the property of the carrier owned and used, owned but not used, and used but not owned, devoted to common carrier purposes, are found to be as follows:

Wholly owned and used	$21,883,575
Owned but not used, leased to Carolina Railroad Company	6,500
Used but not owned—	
Leased from:	
The Atlantic	2,652,800
The Carthage	127,000
Private parties	465
Total	$2,780,265
Total owned	21,890,075
Total used	$24,663,840

There is included in the value above stated as wholly owned and used the sum of $663,575 on account of working capital and materials and supplies."

This fact was about July 25, 1921, as affiant is informed and believes, called to the attention of the State Tax Commission (Commissioner of Revenue) by a letter of that date and the receipt of this letter by the Commissioner of Revenue was duly acknowledged.

This affiant says that neither he nor anyone else authorized to speak for Norfolk Southern Railroad Company has ever requested or consented that its property in North Carolina be valued at a main line mileage pro rate of the cost of replacement new, less depreciation brought down to date.

103 That in the petition filed for review of the prior assessment Norfolk Southern did set forth figures showing a main line mileage pro rate of the cost of replacement new, less depreciation as a reason why the prior assessment was too high, just as it showed a main line pro rate of the value of stocks and bonds and the capitalization of its earnings, and of a proportionate cost of replacement in each of the two states in which it operates, of each of said

leave first had and obtained from the United States, and says that where property is required by law to be devoted to a particular use, the value of the property has a direct and positive connection to the amount which the owner may receive from the use of such property after paying operating expenses, repairs, maintenance and taxes; that Norfolk Southern Railroad Company is required by law to make report of its operations to the Corporation Commission of North Carolina (State Tax Commission) and that the members of the State Tax Commission knew or should have known from
100 such reports that the net operating railway revenue of Norfolk Southern Railroad Company had materially declined in 1919 and 1920 from what it was in 1914, 1915 and 1916.

The State Tax Commission (Corporation Commission) knew at the time they made their assessment in 1920 what the gross earnings, operating expenses, and net operating railway income were, both before and after taxes had been paid, for the past 8 years, and knew or should have known that the net operating railway income of Norfolk Southern Railroad Company had decreased each year from 1916 to the time of valuation.

This affiant is informed and believes that the report of the State Tax Commission to the Governor of North Carolina, bearing date August 10, 1920, which was transmitted by the Governor to the General Assembly, a copy of which is hereto attached marked A, sets out the sole and only basis on which railroad property in the State of North Carolina was valued and sets forth the reasons for such action, and that the method of valuation set out in said report as to railroads was intentional as therein set out and for the purpose of increasing the assessment of railroad property above what the Commission in its report stated had been considered the true value of such property.

This affiant says that the State Tax Commission of North Carolina at the time it made its assessment of Norfolk Southern Railroad Company's property had before it the actual cost of reproduction new less depreciation, brought down to that date, of all the prop-
101 erty of Norfolk Southern Railroad Company, and its lessor lines and a copy thereof is set out in Exhibit B hereto attached.

That on or about May 20, 1920, Norfolk Southern Railroad Company, acting under the laws of North Carolina, made its annual report to the Corporation Commission, for the year ended December 31, 1919; that this report showed that the "Account No. 701, Investment in roadway property and equipment" as it is designated in the forms prepared and sent out by said Commission, was $30,777,491.88 including improvements on leased roads.

That the State Tax Commission assessed for taxation for the year 1920 the property of Norfolk Southern Railroad Company, and its two lessor companies' property at $27,023,462.00, which is slightly more than 87.734% of said investment account, said 87.734% of $30,777,491.88 being $27,002,324.00.

That in 1921 Norfolk Southern Railroad Company filed with State Tax Commission (Commissioner of Revenue) a petition to re-

view and reduce the assessed value of its properties. A copy of the petition and papers are attached, marked "C."

As of June 11, 1921, the Interstate Commerce Commission made its final report of the value of Norfolk Southern Railroad Company's owned and leased lines, which was as follows:

"Final Value.—After careful consideration of all the facts contained in the tentative, and supplemental tentative valuations, including the excess cost of carrier lands, appreciation, de-
102 preciation, going concern value, working capital, including materials and supplies, and all other matters which appear to have a bearing upon the values here reported, the values, as that term is used in the Interstate Commerce Act, of the property of the carrier owned and used, owned but not used, and used but not owned, devoted to common carrier purposes, are found to be as follows:

Wholly owned and used	$21,883,575
Owned but not used, leased to Carolina Railroad Company	6,500
Used but not owned—	
Leased from:	
The Atlantic	2,652,800
The Carthage	127,000
Private parties	465
Total	$2,780,265
Total owned	21,890,075
Total used	$24,663,840

There is included in the value above stated as wholly owned and used the sum of $663,575 on account of working capital and materials and supplies."

This fact was about July 25, 1921, as affiant is informed and believes, called to the attention of the State Tax Commission (Commissioner of Revenue) by a letter of that date and the receipt of this letter by the Commissioner of Revenue was duly acknowledged.

This affiant says that neither he nor anyone else authorized to speak for Norfolk Southern Railroad Company has ever requested or consented that its property in North Carolina be valued at a main line mileage pro rate of the cost of replacement new, less depreciation brought down to date.

103 That in the petition filed for review of the prior assessment Norfolk Southern did set forth figures showing a main line mileage pro rate of the cost of replacement new, less depreciation as a reason why the prior assessment was too high, just as it showed a main line pro rate of the value of stocks and bonds and the capitalization of its earnings, and of a proportionate cost of replacement in each of the two states in which it operates, of each of said

items. And in the letter of General Counsel of the Company to Commissioner of Revenue, dated July 25, 1921, it was stated that unless the State of North Carolina would join in asking the Interstate Commerce Commission to increase the value of Norfolk Southern's property for rate making, it should not be assessed at any higher rate for taxation.

That Norfolk Southern Railroad Company owned all the capital stock of the Carthage & Pinehurst Railroad Company, and has operated said line of railroad as lessee.

That the replacement cost less depreciation of said property $127,000.00; that owing to the great loss accruing to the Norfolk Southern Railroad Company it filed a petition to desist from operating same, and to abandon same. This authority has been granted.

Norfolk Southern has offered to sell the entire property of that company for $37,500.00, the amount of the bonds thereon, but has been unable to do so.

The best price that has so far been suggested is $25,000.00 and that was not an offer, simply a request for an option to buy at that price.

104 That the only value of said property of said company is what it will sell for as scrap or second hand material and what the lands it owns in fee will sell for. That it is doubtful if this property will sell in its entirety or in any other way for as much as thirty thousand dollars.

That under the rule adopted by the Commissioner of Revenue this property is included in the valuation of Norfolk Southern property for not less than $127,000.00.

That under the rule adopted by the State of North Carolina as administered by the Commissioner of Revenue, Norfolk Southern Railroad Company is required to pay taxes in Moore County on a valuation of $255,672.00 for the 12 miles of road belonging to Carthage and Pinehurst Railroad, which cannot be sold for $37,500.00.

That in North Carolina, Norfolk Southern Railroad Company has the following branch lines, which are costly to operate and have very light tonnage, and which materially reduce the earning power and value of its properties in North Carolina:

Beckford Jct. to Suffolk Jct. near Elizabeth City	21 miles
Columbia Branch, Mackey to Columbia	22 miles
Belhaven Branch (including Pinetown cut-off)	41 miles
Oriental Branch, New Bern to Oriental	26 miles
Fayetteville Branch, Varina to Fayetteville	44 miles
Ellerbe Branch, Candor to Ellerbe	18 miles

Total branch line mileage in North Carolina, 172 miles, out of a total main line mileage in the State of 827.647. That the cost of replacement of these branch lines is nothing like as great as the cost of replacing the main line, mile for mile. That the value of these branch lines, mile for mile, is nothing like as great as
105 the main line for that owing to the slight amount of travel and freight moving thereon, the cost of operation on some

if not all of them become an actual burden upon the main line revenue. That the density of traffic and consequent increased value of railroad per mile as the road travels, goes Northward, that is toward and in Virginia.

M. S. HAWKINS.

Sworn and subscribed to before me this 21st day of January, 1922.
[SEAL.]
J. R. PRITCHARD,
Notary Public.

My commission expires 10th day of January, 1925.

EXHIBIT A.

Valuation of Railroads.

One frequent criticism has been that the valuation of railroad properties could not be increased, it being understood that they were assessed at full value before. Our report shows that railroad properties have been increased from $125,417,618 to $250,587,158, or more than doubled. Under the new Interstate Commerce Act the Interstate Commerce Commission is required to make rates that will yield an average return of not less than five and one-half per cent upon the railroad lines as a whole, and to find the fair value of these properties as the basis for making the new rates. That Commission has not yet determined the basis on which the value of the railroad lines will be finally fixed. It will take several years to complete the physical valuation of all of these properties. Pending this final
106 valuation the railroad lines have submitted to the Interstate Commerce Commission what is known as their investment accounts and have asked that this basis of value be used for determining the scales of rates and amount of return they are entitled to earn on their properties. It seems clear to us that the time has come when the value upon which a railroad or public utility is permitted to earn a return is the value upon which it should pay taxes in this State. In either case the purpose is to find the fair value of the property. So that generally our valuation of the railroad lines in this State is based upon a mileage proportion of their investment account, which they have asked the Interstate Commerce Commission to adopt as the basis for making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines, based upon the volume of business in this State greater than the average volume of traffic on their lines as a whole.

The experiences of recent years have been conclusive that any amount of tax levies against railroad companies is a tax upon the whole public served by them. If it were legal to do so, and we were to collect all public revenue from railroad companies, it would simply mean that we would pay our taxes through railroad depots and ticket offices instead of the public officers who now collect them. The new assessment of railroads does not represent as great an increase

as the average increase of other property, for the reason that they were assessed relatively higher than other property before, but we anticipate that it will meet the fair demands of public opinion when it is known that they are assessed like other property at their
107 full value, and upon a valuation quite as high as that upon which they are asking to be permitted to earn a return.

EXHIBIT B.

Cost of Reproducing New Less Depreciation of Norfolk Southern Railroad Company's Owned and Leased Property in North Carolina, Brought Down to 1920, Including all of its Equipment Wherever Located.

	N. S. R. R.	A. & N. C. R. R.	C. & P.
Engineering and Overhead	$1,524,105	$231,188	$11,321
Land used for Carrier Purposes	1,335,362	582,155	8,915
Non-carrier Lands	501,148	150,532	3,350
Road Bed and Track	9,381,012	1,111,360	89,713
Crossings and Signs and Fences	122,142	6,488	397
Telegraph and Telephone Lines	83,789	9,233	112
Signals and Interlockers	17,488	2,161	.....
Station and Office Buildings	409,055	162,221	2,800
Roadway Buildings	92,094	5,420	5,917
Water Stations	93,129	10,700	500
Fuel Stations	43,876	5,290	.....
Shop and Equipment	97,669	79,085	.....
Roadway Machines	53,317	.....	.....
Steam Locomotives (entire system)	544,048	42,400	.....
Freight Train Cars (entire system)	3,125,321	15,795	.....
Passenger Train Cars (entire system)	257,580	50,683	.....
Work Equipment	78,334	2,470	.....
Miscellaneous	84,791	89,119	.....
Total	$17,844,260	$2,556,300	$123,025

EXHIBIT C.

In the matter of Application of NORFOLK SOUTHERN RAILROAD COMPANY for a Review of the Assessment of Its Property and the Property of its Lessors on Which It Pays Taxes, Made under the Provisions of Section 28-C of the Machinery Act of 1921, Ratified the 8th Day of March, 1921.

Norfolk Southern Railroad Company respectfully showeth:

1st. That it owns a line of railroad extending from the City
108 of Norfolk, in the State of Virginia, to the City of Charlotte, in the State of North Carolina, with certain branch lines;

that it operates as a part of said railroad system: (*a*) a line of railroad leased from the Atlantic & North Carolina Railroad Company, extending from Morehead City to Goldsboro; (*b*) a line of railroad leased from the Carthage & Pinehurst Railroad Company extending from Pinehurst, North Carolina, to Carthage, North Carolina.

2nd. That there is of said railroad 900.543 miles of main line, of which 790.264 is situate in the State of North Carolina, and 110.279 is situate in the State of Virginia.

Said main line is divided as follows: In Virginia, owned line 110.279. In North Carolina, owned line 682.128 miles; leased from the Atlantic & North Carolina Railroad Company 95.91 miles; leased from the Carthage & Pinehurst Railroad Company 12.226 miles.

3rd. Acting in accordance with the provisions of section 62 of the Machinery Act of 1919, the petitioner in 1920 duly listed with the list takers of the county where situate, all of its machine and repair shops, general office buildings, storehouses and contents located outside of the right of way, and also all real and personal property, other than the property returned to the State Tax Commission; and said property was by said List Takers and the assessors assessed for taxation at the sum of $792,666.00.

Petitioner has filed application with List Takers in accordance with the provisions of the laws of North Carolina for the re-
109 duction in the assessment of some of said property, and many of the counties in the State have, as petitioner is advised, by ordinances of the county commissioners, or other tax reviewing authorities, reduced the assessment, not only on petitioner's property, but upon the real property of all other taxpayers in such counties.

Petitioner is unable at this time to state what will be the valuation fixed by local appraisers upon the property required to be listed locally, and so listed by petitioner.

4th. The Tax Commission is required under the laws of North Carolina to ascertain the value of the physical and tangible property and the franchises of Norfolk Southern Railroad Company in its entirety, such value is required to be divided between the several States in which the said line of railroad operates, according or in proportion to the number of miles of main line of railroad in each State, giving due consideration to other matters affecting such division. Apparently the Tax Commission assessed the value of the Norfolk Southern Railroad Company's entire system at $30,806.675.00, and allotted to the State of North Carolina $27,034,168.00, being the mileage proportion of such valuation.

5th. Such valuation is excessive, when tested by any method known for the valuation of property:

(*a*) One method of testing the value of such property is, as pointed out by the statute of North Carolina, the value placed upon the whole property by the public. The only method of testing the

110 value of railroad property in its entirety by the public is to consider the price at which its bonds and stocks sell for on the market, over a period of years.

Attached hereto is a statement, marked Exhibit "A," showing the outstanding bonded indebtedness of this Company, the Atlantic & North Carolina Railroad Company and the Carthage & Pinehurst Railroad Company, for the past six years, and the capital stock of each of these companies, together with their market value as shown by the prices at which the various bonds and stocks were sold during these years. Tested by this method it conclusively appears that the value of the property of the Norfolk Southern Railroad Company, including both its tangible and intangible property, including all of its choses in action (which are not subject to taxation in the State of North Carolina, and which are considerable in amount), does not aggregate the value placed upon the property by the Tax Commission during the year 1920.

6th. Another method of determining the value of property is by ascertaining the net earnings of such property under careful and efficient management and capitalizing these net earnings at a proper rate of interest. That for a long number of years the rate of charges Norfolk Southern Railroad Company might make for transportation over its line of railroad has been fixed by both State and Federal statutes, each within its own sphere.

On and as of the first day of January, 1918, the United States Government, as a war measure, took possession and control of the line of railroad owned and/or operated by the Norfolk South-
111 ern Railroad Company, as a fair compensation for the use of said property during the years 1918 and 1919 and to March 1, 1920, paid the same return for the property which the corporate body had been able to earn on said property on the average during the three years ended June 30, 1917.

After thorough investigation of the accounts of this company, the Interstate Commerce Commission, acting on behalf of the Government, ascertained and fixed as a proper return upon the property of Norfolk Southern Railroad Company, and as being the amount which it had earned on the average during the three years ended June 30, 1917, as the sum of $1,252,759.84 per year, giving due consideration to the potential earnings of its newly constructed lines.

Under the terms of the Transportation Act of 1920, United States Government, for the six months ended August 31st, 1920, guaranteed to the Norfolk Southern Railroad Company the same average earning as was paid during a half year of the period of Federal control. Except for said guaranty the gross income of petitioners during the said six months would not have been sufficient to pay its operating expenses.

The average annual return upon petitioner's property for the period beginning June 30, 1914, and ended August 31, 1920, has been at the rate of $1,252,759.84; that this amount, capitalized at 5½%, which the Transportation Act of 1920 established as a fair

return upon the value of property devoted to public use by railroads, would show the value of said property to be $22,777,450.00,
112 and if capitalized at 6% per annum, which the Transportation Act provides may be earned upon condition that one-half per cent be devoted to betterment of the property, the value would be $20,889,330.00.

7th. Another method of ascertaining the value of railroad property is the cost of reproduction of such property, less depreciation. Under the provisions of the Interstate Commerce Act relative to the valuation of railroad property by the Interstate Commerce Commission, agents of the Bureau of Valuation examined the property of Norfolk Southern Railroad Company, including its said leased lines; made a report of the cost of reproducing said lines of railroad, both new and with depreciation as authorized by the rules of the Commission, which included all of its non-carrier lands and buildings. A copy of the report was duly served upon the State of North Carolina. The State of North Carolina made no exception, apparently accepted the findings of the Bureau of Valuation as the cost of reproducing said property, and the cost of reproducing the same less depreciation. The Bureau of Valuation report showed the cost of reproducing the property of Norfolk Southern Railroad Company, including its leased lines, without depreciation, as $27,680,811.00, and after deducting depreciation, $23,412,336.00. Since the date of said valuation petitioner has made additions and betterments to its road bed and rolling stock according to the rules of the Interstate Commerce Commission to the value of $2,616,030.00. After being depreciated according to the rules of the Commission, the cost of reproduction less depreciation is $26,028,366.00.

113 8th. It is quite evident from a consideration of these facts and figures, that the Tax Commission, in making its valuation of 1920, failed and neglected to take into consideration the depreciation upon property which had been reported by the Interstate Commerce Commission, and which by the laws of North Carolina are required to be taken into consideration in fixing the value thereof.

9th. Testing the value of said railroad in its entirety, (including all of its property), by the value put upon it by the public, it would be $17,717,700.00; by capitalizing its average earnings for the past 6 years at 5½% it would be $22,777,450.00; by the cost of reproduction, less depreciation, including the additions, betterments and rolling stock since the report of the Interstate Commerce Commission, it would be $26,028,366.00. The average of all three would be $22,174,505.00.

Taking either of said sums and allotting to the State of North Carolina a mileage proportion, the taxable value of the property in North Carolina would be:

(*a*) Upon the sale value of the bonds and stocks the price placed on all the property by the public.

North Carolina	87.754%	$15,567,990.00
Virginia	12.246%	2,169,710.00
		$17,717,700.00

(*b*) Upon the valuation which the Act of Congress allows the Company to earn 6% cost of reproduction less depreciation.

North Carolina	87.754%	$22,840,932.30
Virginia	12.246%	3,187,433.70
Total		$26,028,366.00

114 (*c*) Upon the average annual earnings for the six years ended July 31, 1920, capitalized at 5½% amount fixed by Act of Congress as fair rate of return.

North Carolina	87.754%	$19,988,123.47
Virginia	12.246%	2,789,326.53
Total		$22,777,450.00

(*d*) Same as (*c*) capitalized at 6%, where ½% of the earnings must go into the property:

North Carolina	87.754%	$18,332,447.25
Virginia	12.246%	2,556,882.75
Total		$20,889,330.00

10th. Report of the Bureau of Valuation of the Interstate Commerce Commission, which seems to have been accepted by both Virginia and North Carolina authorities, discloses that allocating to the State of Virginia the electric equipment of the company, which is used exclusively on the electric division, which uses both steam and electric equipment, the cost of reproduction less depreciation of the properties in the two States respectively is divided as follows:

Virginia	18%
North Carolina	82%

Dividing the value of the property in its entirety on a percentage basis ascertained from the Bureau of Valuation of the Interstate Commerce Commission as the cost of reproduction less depreciation in the two States, we have the following:

(*a*) Upon the sale value of the bonds and stocks the price placed on all the property by the public.

North Carolina	82%	$14,528,514.00
Virginia	18%	3,188,186.00
Total		$17,716,700.00

(*b*) Upon the valuation which the Act of Congress allows the Company to earn 6% (cost of reproduction less depreciation).

North Carolina	82%	$21,343,260.12
Virginia	18%	4,685,105.88
Total		$26,028,366.00

115 (*c*) Upon the average annual earnings for the six years ended June 30, 1920, capitalized at 5½%, amount fixed by Act of Congress as fair rate of return:

North Carolina	82%	$18,677,509.00
Virginia	18%	4,099,941.00
Total		$22,777,450.00

(*d*) Same as (*c*) capitalized at 6%, where ½% of the earnings must go into the property:

North Carolina	82%	$17,129,250.60
Virginia	18%	3,760,079.40
Total		$20,889,330.00

11th. Attention is respectfully called to the provisions of the Interstate Commerce Act as amended by the Transportation Act of 1920.

(*a*) Rates and charges which carriers can make for transportation of commodities is limited and fixed by the Interstate Commerce Commission; therefore, Norfolk Southern Railroad Company cannot charge any higher rate than is permitted by the Interstate Commerce Commission, for any service which it may render the public. It necessarily follows that the amount, which the railroads may earn from transportation is dependent upon the rate fixed by the Interstate Commerce Commission, and the amount of commodities tendered to the Company for transportation.

(*b*) The law declares 5½% upon the aggregate value of all the property devoted by railroads to public use to be a fair return for the two year beginning March 1, 1920, and limits the authority of the Interstate Commerce Commission in fixing rates, to prescribe a set of rates which in the aggregate will yield that amount, with the power to add an additional one-half of one per cent to be invested in additions, betterments and equipment. The law further pro-
116 vides that if after such schedule of rates has been fixed, any one particular carrier should, under such schedule, by reason of greater tonnage, be able to earn more than the 6%, then and in that event certain portions of such excess earnings would be paid over to the Interstate Commerce Commission to be used by the Commission in furtherance of the public interest in railway transportation.

It necessarily follows therefore, that there is a limit in earning power beyond which property owned by railroads and devoted to public use cannot go, and this ability to earn even that rate is dependent upon the density of traffic or the amount of goods tendered to a railroad company for transportation.

(c) The Interstate Commerce Act as amended, in its practical effect, gives authority to the Labor Board sitting in Chicago to prescribe and fix a schedule of wages or salaries which railroads shall pay to their employees.

Therefore, for all practical purposes the gross earnings of railroads are prescribed by law, varying of course with the amount of freight and passengers which is tendered for transportation, and the operating expenses are also largely prescribed by law. The effect of this is naturally to limit the net earnings of railroads, and therefore reduce the value of the property, for if the earning power of property is by law fixed at a certain sum, then the value of that property is fixed by law, and varies only with the value of the purchasing power of the dollar, which the property is allowed to earn.

The practical result of legislation which has taken place during the past six years has been to materially reduce the value of railroad property.

117 Your petitioner, therefore, respectfully shows in conclusion, that its property in North Carolina has been excessively valued for taxation and the Commission is respectfully requested to reduce this valuation to such figures as may be just and proper and as shown by the foregoing facts.

Respectfully submitted,

NORFOLK SOUTHERN RAILROAD COMPANY,
By W. B. RODMAN,
General Counsel.

EXHIBIT "C."

Table showing average net income per mile from railway operation for the years 1917, 1918, 1919 and 1920, of the railroads named below, as taken from their reports for years 1917, 1918 and 1919, as published by the Bureau of Railway Economics, and for the year 1920 in the Railway Age, the comparative value per mile, based on this net, the value at which assessed, and the value of the Norfolk Southern as compared with other roads:

Name of railroad.	Average per mile net from railway operation, 4 years.	Ratio of earnings per mile to N. S.	Assessed value per mile.	Valuation of Norfolk Southern as compared with other lines, based on net from railway income.
Norfolk Southern...	$418.00	1%	$32,385.50	$32,385.50
A. C. Line.....	2,032.00	4.86%	50,864.72	10,466.00 per mile.
Seaboard Air Line..	815.00	1.95%	53,652.41	27,515.00 per mile.
Southern	3,132.00	7.49%	68,000.00	9,078.00 per mile.

Showing that Norfolk Southern, based on earning power, is valued more than three times as high as Southern or Atlantic Coast Line, and one and one-fourth times as high as Seaboard Air Line.

118 EXHIBIT "D."

State of North Carolina,
Corporation Commission,
Raleigh.

May 17th, 1920.

Mr. M. S. Hawkins, Asst. to Pres.,
Norfolk & Southern Railway,
Norfolk, Va.

DEAR SIR:

The Commission would like to have from your Company a statement of the value of your property investment filed with the Interstate Commerce Commission for the purpose of aiding the Interstate Commerce Commission in fixing its rate basis so as to arrive at a six per cent return under the Transportation Act, 1920.

The Commission would like to have this information as early as possible.

Yours very truly,
(Signed) J. S. GRIFFIN,
Clerk in Charge Revaluation Assessment.

g-e.

Copy to:
C. J. Joseph, Tax Agent, Atlantic Coast Line, Wilmington, N. C.
Mr. W. L. Stanley, Ass't to Pres., S. A. L. R. R., Atlanta, Ga.
Mr. H. G. Morrison, Gen. Counsel, C. C. & O. R. R., Johnson City, Tenn.
Mr. Murry R. Hubbard, Tax Commissioner, Southern Railway, Atlanta, Ga.

119 May 21, 1920.

Corporation Commission of State of North Carolina,
Raleigh, North Carolina.

Attention Mr. J. S. Griffin, Clerk in charge Revaluation Assessments.

GENTLEMEN:

I have yours of the 17th in which you ask that this Company furnish you a statement of the value of the Norfolk Southern Railroad property investment filed with the Interstate Commerce Commission for the purpose of aiding the Interstate Commerce Commission in fixing its rate basis so as to arrive at a 6% return under the Transportation Act of 1920.

I beg leave to advise that this Company has not filed any statement with the Interstate Commerce Commission other than its annual and monthly reports. The book value or property investment account of Norfolk Southern Railroad Company appears in its report as filed with the Interstate Commerce Commission and with the Corporation Commission of North Carolina.

Yours truly,

M. S. HAWKINS,
Asst. to President and Secretary.

EXHIBIT D.

Raleigh, N. C., May 31, 1920.

M. S. Hawkins,
Asst. to President Norfolk and Southern R. R.,
Norfolk, Va.

Referring to our request for the property investment used by your company in your petition before the Interstate Commerce Commission for increase in freight rates under the Transportation Act. Please let us have these figures by wire if possible and oblige,

J. S. GRIFFIN.

Norfolk, Va., June 1, 1920.

J. S. Griffin,
Clerk North Carolina Corporation Commission,
Raleigh, N. C.

Yours. Report to Interstate Commerce Commission property investment to December thirty-first, $31,484,868.

M. S. HAWKINS.

120 *Order for Filing Affidavit of Members of Former Tax Commission.*

Filed April 6, 1922.

In the District of the United States for the Eastern District of North Carolina.

NORFOLK & SOUTHERN RAILROAD COMPANY.

vs.

A. D. WATTS and Others.

In this cause it is agreed by counsel and so ordered by the Court that the affidavit of the members of the former Tax Commission of North Carolina filed in the case of the Southern Railway Company against A. D. Watts and others shall be filed and considered as a part of the evidence in the case, that is to say, the Atlantic Coast Line

Railroad Company, Seaboard Air Line Railway Company, Norfolk & Southern Railroad Company and Atlantic & Yadkin Railway Company.

H. G. CONNOR,
U. S. District Judge.

121 *Affidavit of Members of Former Tax Commission of North Carolina.*

Jan. 24, 1922.

In the District Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue. et als.

And the other suits against the same defendants, brought by Atlantic Coast Line Railroad Company, Sea Board Air Line Railway Company, Norfolk & Southern Railroad Company, Atlantic & Yadkin Railway Company.

Affidavit by the Members of the Former Tax Commission of North Carolina.

122 STATE OF NORTH CAROLINA,
Wake County:

W. T. Lee, George P. Pell and A. J. Maxwell make this statement under oath.

That in the years 1919 and 1920 W. T. Lee, George P. Pell and A. J. Maxwell were members of and constituted the State Tax Commission, W. T. Lee being Chairman of the State Tax Commission, and had and exercised the duties and responsibilities conferred upon them by Chapter 92 of the Public Laws of 1919 and by Chapter 84 of the Public laws of 1919, and as the State Tax Commission exercised the powers and duties of a Board of Appraisers of all properties, located within the State of North Carolina, of all railroad companies (excepting certain incidental properties of such companies assessed by local authorities) and also had and exercised supervision of the valuation of all real property of every kind and of the listing and valuation of all personal property of every kind in all counties of the State. In the supervision of the listing and valuation of such properties by local assessing officers, under the laws hereinbefore referred to, it was the purpose to have all lands listed and valued equally at the true value of such lands and assessing officers were required to ascertain the actual sales value of lands, where there had been a recent sale, and to use the information thus obtained, as well as all other information obtainable, in finding the actual true value of such lands on the first day of May, 1919, and in estimating the

value of other similar lands, in cases where there had been no recent sales, and that as to industrial plants of all kinds and the tracks, structures, buildings and equipment of railroad companies—properties which had not been subject to unit sales as a whole and the value of which could not, therefore, be determined with relation to an actual sale of such properties—it was the purpose to require, and the State Tax Commission did in so far as it could reasonably do so, the owners of industrial plants and railroad companies, to furnish information on forms prepared by experienced persons employed by
123 the State Tax Commission, complete detailed information, under authority of section thirty-one of Chapter 84 of the Public Laws of 1919, of the cost of reproduction of such industrial plants on the price level of May 1, 1919, and as to railroads the cost of reproduction of the properties of such companies new (on May 1, 1919) including side tracks, doubled tracks, and all properties owned by such companies in this State, less reasonable depreciation for such of its properties as had depreciated in value, and also information as to capital stock, bonds and other indebtedness, earnings, and so on.

The Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk Southern Railroad Company, in response to demands made upon them for specific and detailed information as to the cost of reproduction of the properties in this State of each of these companies, did file with the State Tax Commission certain sets of figures, now on file with the Commissioner of Revenue, but did not pretend that such figures even approximated the cost of reproduction of the properties owned by these companies, or either of them, in this State, in the year 1919, but, on the other hand, insisted that it would not be possible for them to furnish this information at any reasonable cost or at any cost within a period of several years. The State Tax Commission, therefore, did not have the benefit of this specific detailed information with respect to the value of the particular properties in this State of these several railroad companies which it did have with respect to, and used in, the valuation of properties of industrial enterprises within the State, and of necessity had to form its valuation of the properties of these companies without having this information and by making the best use that it could of other information furnished by these companies and information on file with and in the records of the North Carolina Corporation Commission.

One of the evidences of value submitted for consideration by each of these companies was what is technically known as "in-
124 vestment accounts" of these companies, not within the State of North Carolina, but throughout the entire systems of railroads owned by them in many states other than North Carolina; that it was insisted by them that the proportion of their total investment account which their main line mileage within the State of North Carolina bore to the total main line mileage of each of these several railway systems throughout the several states in which they operated would give a fair value of the property of such companies within the State of North Carolina, except that it was insisted that they had

larger and more expensive terminal facilities outside the State of North Carolina than they had at any one point within the State of North Carolina, and that for this reason the straight mileage proportion of their investment account would be more than a fair proportion for this State.

The State Tax Commission was not able to agree with them that this method would fairly determine the value of their properties within the State of North Carolina, for that, first, their investment accounts represented investments made in the properties going back through a long period of years to their original organizations, and such investment having been in a large part made in years when the general price level of materials, commodities and labor was very much lower than the price level for materials, commodities and labor was on May first, 1919; and for that, second, a straight mileage proportion of their lines did not, in our opinions, accurately or fairly represent the actual value of the properties of either the Southern Railway Company, the Atlantic Coast Line Railroad Company or the Seaboard Air Line Railway Company within the State of North Carolina, the lines of these companies within North Carolina having, in our opinion, a much greater value than an average based upon the mileage for their entire systems, in that they have a larger proportion of double track main line mileage in North Carolina than for their entire systems, and in that both the gross and net earnings of each of these railway lines within the State of North Carolina is much greater than the average gross and net earn-
125 ings per mile for their entire systems. All of this was duly considered by the Commission in proportioning, dividing and determining the valuation of the property of the said railroads in North Carolina as provided by law.

For the year 1918, the last calendar year prior to the first day of May, 1919, the excess net operating revenue per mile within the State of North Carolina of each of these railway companies in excess of the net operating revenue per mile for their entire systems, stated in percentages as shown by their reports on file with the Corporation Commission, was as follows:

Southern Railway Company	50.48
Atlantic Coast Line Railroad Company	19.75
Seaboard Air Line Railway Company	250.01

A satisfactory estimate of value could not be made based upon the market value of the stocks and bonds of these companies on the first day of May, 1919, for the reason that the limited market and the limited number of shares and bonds sold on the market did not furnish, in our judgment, a fair index of the actual value of these properties as a whole, and more particularly did not furnish an index of the actual value of the properties of these companies located within the State of North Carolina for the reasons hereinbefore stated; nor was it considered that the actual value of these properties could be fairly determined by their earnings, until there should

be a fair return to normal conditions of operating costs, flow of traffic and stablization of transportation rates.

For the reasons hereinabove set out, the valuation finally made or determined by the State Tax Commission of the properties of each of these railway companies within the State of North Carolina as of the first day of May, 1919, was not made with the sole and exclusive relation to any one element or indicia of value, but after due and proper consideration of all of them and upon the best knowl-
126 edge and information obtainable by the Commission.

The members of the Commission have for years been actively engaged in the matters of valuation for rate making and taxation purposes in North Carolina and are acquainted with property values of railroads in the State and in assessing the properties of the plaintiffs the Commission gave due consideration to all factors and methods prescribed by the law governing such valuations and the values of said properties as fixed and determined by the Commission as of the first day of May, 1919, were, in the opinion of affiants, fair, just and reasonable.

As to the properties of the Southern Railway Company in the State of North Carolina, a valuation of $111,308,325 was made, which was in fact the proportion of the investment account of the Southern Railway Company which the gross earnings of that company within the State of North Carolina bore to the total gross earnings of the Southern Railway Company for the entire system. Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960,416, which was in fact the amount which the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis or theory of six per cent, would have produced.

In general, the same method was followed in fixing the valuation of the total properties in the State of the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railroad Company, and the Norfolk and Southern Railroad Company. In each case the basis consideration was the cost of reproduction value less depreciation, which, in the absence of correct reports of such values by the railroads as they are required by law to furnish and which were duly called for by the Commission, was arrived at accurately as possible by a consideration of the investment account. In each case a tentative cost of the reproduction value was found in this way which, except in the case of the Norfolk Southern, was in excess of the assessment as finally arrived at. In the case of the Norfolk and Southern this investment account, or cost of reproduction, value was the same as the final assessment and that railroad made
127 no application to the Commission for rehearing on that assessment and took no exception thereto. In the case of the other railroads, a consideration of capitalization of new income and of the other factors which the Tax Commission was authorized by law to consider led to the reduction of this investment account, or

cost of reproduction, value to the valuation fixed as the final assessment.

After the assessments of the properties of the plaintiffs had been arrived at by the Tax Commission pursuant to the Revaluation Act (Public Laws of 1919, Chapter 84) the Commission, as required by law, made report of its action and valuation to the general assembly of North Carolina and thereupon, in the special session of 1920 the General Assembly, by Chap. 1, Public Laws, Extra Session 1920, specifically approved said valuations as correct and adopted them as and declared them to be the basis for taxation for the years 1920-1923, inclusive, except as such valuations should be thereafter changed according to law. And the affiants are informed and believe and so aver that the said valuations, so made by the Commissions and reported to the General Assembly and approved and adopted by it, have remained and still are the basis for taxation of the said railroads in North Carolina except in so far as they have been modified or changed by the Commissioner of Revenue upon application made by him by the said railroads for review as provided by law.

As to the tentative values of the engineers of the Interstate Commerce Commission, referred to by the plaintiffs in these suits as being proper indices of the correct valuation of their total properties in North Carolina, the said tentative values were arrived at upon the basis of an inventory of the railroads' properties as of the date of June 30th, 1914. The affiants state of their own knowledge that the said prices prevailing in 1914 as to material, labor, and all costs of railroad construction, were abnormally low, that since that time such prices have greatly increased, and that in 1919 and in 1920 the safe prices of labor, materials and all things going into the construction of railroads were very much higher than those of 1914 upon which the said tentative figures of the Interstate Commerce Commis-
128 sion were based. In the opinion of the affiants the said tentative figures in no way furnish a proper index or test of the value of the properties of railroads in North Carolina in 1919 and 1920.

It was the purpose of the State Tax Commission in valuing the property of transportation companies and other companies exercising the right of eminent domain, and in the supervision of the valuation of all other property by local assessing officers, to carry out and to have carried out what the State Tax Commission understood to be the general purpose of Chapter 84 of the Public Laws of 1919—that all property of every class should be fairly and equally valued at its actual value, and in evidence that no injustice was done to the Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railroad Company and the Norfolk Southern Railroad Company—there is attached hereto a copy of the report of the State Tax Commission to the Special Session of the General Assembly of 1920, showing by comparison, the valuation of 1920 compared with the former valuation of each of the several different classes of properties within the State of North Carolina

and showing that the increase in valuation of all railroad property within the State of North Carolina was 99 per cent; of real property 296 per cent; and of all property of all classes within the State 194 per cent.

W. T. LEE.
A. J. MAXWELL.
GEO. P. PELL.

Sworn to and subscribed before me this January 21, 1922.
W. H. PITTMAN,
Notary Public.

My commission expires July 29, 1922.

129 *Opinion of the Court.*

Filed Mar. 21, 1922.

In the District Court of the United States.

In Equity.

SOUTHERN RAILROAD COMPANY, ATLANTIC AND YADKIN RAILWAY Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Norfolk Southern Railroad Company,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, and Others.

Before Waddill, Circuit Judge, Boyd and Connor, District Judges.

Per Curiam:

Bills were filed in equity by the above named Companies, to-wit: The Southern Railroad Company and the Atlantic and Yadkin Railway Company in the United States District Court for the Western District of North Carolina and the Atlantic Coast Line Railway Company and the Norfolk Southern Railroad Company, in the Eastern District of North Carolina, against the defendants A. D. Watts and A. D. Watts, as Commissioner of Revenue, Baxter Durham, Auditor, Benjamin R. Lacy, Treasurer, and James S. Manning, Attorney General of North Carolina, in which, for the causes therein set forth, they and each of them, prayed for an Interlocutory Injunction restraining and enjoining said defendants, in their individual and official capacity, from proceeding with the collection and the enforcement of payment against complainants, of certain taxes assessed, or about to be assessed, against complainants and their property, until the final hearing of said causes for that, among other things alleged in the bills, the statutes of the State of North Carolina under and pursuant to which, said taxes were assessed and sought to be enforced, were unconstitutional and void. Pursuant to the provisions of Sec-

tion 266 of the Judicial Code, James E. Boyd, Judge of the
130 Western District, called to his assistance in hearing said motions for Interlocutory Injunction in said causes, brought in the Western District, Edmund Waddill, Jr., Circuit Judge of the Fourth Circuit, and H. G. Connor, Judge of the District Court of the Eastern District of North Carolina, and H. G. Connor, Judge of the Eastern District, called to his assistance, in hearing said motions, brought in the Eastern District, Edmund Waddill, Jr., Circuit Judge of the Fourth Circuit, and James E. Boyd, Judge of the District Court of the Western District of North Carolina.

As required by the provisions of the statute, the said District Judge in the causes pending in said District, made orders in which they directed the defendants to show cause, at a time and place therein named, why the Interlocutory Injunctions should not be granted as prayed for.

The motions in said causes were, by consent of complainants and defendants, by their attorneys, heard together, at Greensboro, North Carolina, on January 24th, 1922, when and where said Judges being present, said motions were heard upon the bills, answers, affidavits, exhibits and argument of counsel, for all parties in said causes.

The further consideration of the motions was by consent of counsel, and order of the Court, continued to Raleigh, North Carolina on March 16th, 1922, when and where said Judges, being present, proceeded to consider said motions upon the pleadings, affidavits, exhibits and briefs filed by counsel.

It appears from the bills and answers that the said motions, and prayer for final relief of complainants, are based upon the following allegations and contentions:

(1)

That the property of complainants was not assessed in the same manner and by the same method as the property of the individual citizens of the State and that, the manner and methods by which complanaints' property is appraised and assessed for taxation, operates as an unjust and unlawful discrimination against complain-
131 ants, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and that, thereby, complainants are deprived of their property without due process of law.

(2)

That the appraisal and assessment for taxation of the property of complainants are not made in accordance with the provisions of the Constitution and Statutes of the State of North Carolina and that said appraisal and assessment of taxes thereon are invalid.

(3)

That the appraisal of the value of complainants' property is in excess of its true value, for the purpose of taxation, as provided by the Constitution of North Carolina and is, therefore, invalid.

(4)

That the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States in the appraisal and assessment of complainants' property, are violated in that complainants' property, alleged by the State to be assessed at its true value for taxation, the property of other tax payers in the State, is appraised and assessed for taxation at less than its true value.

That the Franchise or Privilege Tax imposed upon complainants is invalid for that:

(1)

The ad valorem assessment is in excess of its true value for taxation and that the Franchise or Privilege Tax, based thereon, in accordance with the Statutes of the State, violates the Constitution of the United States and the State of North Carolina.

(2)

The Franchise or Privilege Tax is, in truth and fact an ad valorem tax and invalid, because not imposed upon the property of other citizens of the State.

(3)

That the statute of North Carolina under, and pursuant to
132 which the Franchise or Privilege Tax is imposed and sought to be enforced imposes a tax upon the privilege of doing business by complainants, both interstate and intrastate and is, therefore, a burden upon interstate commerce and thereby violates the Commerce Clause of the Constitution of the United States.

(4)

That, if the Franchise or Privilege Tax, imposed upon complainants be valid, the method of ascertaining the value of complainants' property as a basis for fixing the amount of said Franchise or Privilege Tax includes property of complainants used, as well in interstate as intrastate commerce, and violates the Commerce Clause of the Constitution of the United States.

The Court, after consideration of the bills, exhibits, affidavits and argument of counsel, is of the opinion that, for the purpose of this motion only, complainants have neither in their pleadings nor upon

the proofs adduced, made such a case as entitled them to have an Interlocutory Injunction in said causes as prayed for and the motions for such Interlocutory Injunctions in respect to the ad valorem and the Franchise and Privilege Tax should not be granted and said motions and each of them are denied.

The Court is of the opinion that the contentions sought to be made by complainants in regard to the imposition and enforcement of the Income Tax against complainants, as provided by the Constitution of North Carolina, Article V, Section 3, as amended, and the statutes enacted by the Legislature, pursuant thereto and for the enforcement thereof are not presented upon the bills and proofs herein.

The Court, therefore, does not pass upon, or express any opinion in respect to the validity of the Income Tax, or the statutes enacted for its enforcement. Complainants may, in respect to such Income Tax, proceed without prejudice in such manner as they may be advised.

Let this opinion, and a copy thereof, be filed and an order drawn and signed to be filed in the record in each of said causes in
133 accordance therewith.

The further proceedings in said causes, in the Courts of the District, in which they are pending, will be had as provided by the Judicial Code and the course and practice of said Courts. The costs of the motion will abide the final decrees in said causes.

At Raleigh, North Carolina, this the 18th day of March, 1922.

EDMUND WADDILL, JR.,
United States Circuit Judge
Fourth Judicial Circuit.

JAMES E. BOYD,
United States District Judge,
Western District of North Carolina.

H. G. CONNOR,
United States District Judge,
Eastern District of North Carolina.

134 *Order Denying Interlocutory Injunction.*

Filed Mar. 18, 1922.

In the United States District Court for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Commissioner of Revenue, and Others, Defendants.

This cause came on this 18th day of March, 1922, before the United States District Court for the Eastern District of North Caro-

lina, held by the undersigned three United States judges sitting pursuant to the provisions of Section 266 of the Judicial Code, to be heard upon a motion for an interlocutory injunction to enjoin and restrain the State of North Carolina from collecting certain taxes enumerated in the complainant's bill, which motion was heard and considered upon the pleadings and the affidavits filed respectively by the complainant and the defendants, and was argued by counsel. Thereupon the court composed of the three judges sitting as aforesaid, having filed an opinion denying the right of the complainant to have an interlocutory injunction it is, for reasons stated in writing in said opinion filed in this cause, and pursuant thereto, adjudged, ordered and decreed that said injunction so prayed for, be and the same is hereby refused and denied. And it is further ordered that the defendants shall not proceed to enforce the collection of taxes involved in this litigation, for the period of thirty days from the date of this order, to the end that the complainant may take such action in the premises as it is advised to.

(S.) EDMUND WADDILL, JR.,
United States Circuit Judge,
Fourth Judicial Circuit.

(S.) JAS. E. BOYD,
United States District Judge,
Western District of N. C.

(S.) H. G. CONNOR,
United States District Judge,
Eastern District of N. C.

135 *Notice of Application for Appeal and Stay.*

Filed Mar. 30, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

To the defendants in the above entitled action and Honorable James S. Manning, Attorney General of North Carolina, and Frank Nash, Assistant Attorney General, Solicitors for defendants:

You will please take notice that on Thursday, March 30th, 1922, at 10:00 o'clock A. M., or as soon thereafter as counsel may be heard, the above named complainant will apply to His Honor, Henry G. Connor, District Judge, at office in Wilson, N. C., for an order allow-

ing the complainant to appeal to the Supreme Court of the United States and granting a stay of proceedings until the appeal shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

NORFOLK SOUTHERN RAILROAD COMPANY,
(S.) By W. B. RODMAN,
Solicitor.

Filed at Wilson, N. C., March 30th, 1922.
(S.) H. G. CONNOR,
District Judge.

136 *Order Fixing Time for Hearing Application.*

Filed Mar. 31, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

Order.

The plaintiff in the above entitled cause having presented its application for appeal to the Supreme Court from an order of Circuit Judge Waddill, and District Judges Boyd and Connor, dated March 18, 1922, and its application for a stay pending the decision of the Supreme Court upon appeal and counsel for defendants having requested of the Court a continuance,

It is now ordered that this application be continued to be heard before me at Wilson, North Carolina, at Chambers, at 11 o'clock A. M., April 8th, 1922.

That copies of this order be mailed to the Attorney General and his associate counsel.

This the 30th day of March, 1922, at Wilson, North Carolina.

H. G. CONNOR,
U. S. District Judge.

137 *Assignment of Errors.*

Filed Apr. 15, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et als., Defendants.

Assignment of Errors.

Now comes the complainant in the above entitled cause and in connection with its petition for appeal from the order entered in this cause March 18, 1922, (by the Court convened under section 266 of the Judicial Code of the United States), denying the motion for an interlocutory injunction, pendente lite, files the following assignment of errors:

The Court erred:

(1) In decreeing that the interlocutory injunction be denied.

(2) In holding that for the purpose of the motion for an interlocutory injunction only, complainant neither in its pleadings, nor upon the proof adduced, is entitled to have the interlocutory injunction applied for.

(3) In failing to hold that the assessment of complainant's property for taxation is in excess of its "true value" in money for the purpose of taxation as required by the Constitution of North Carolina and is therefore invalid.

138 (4) In failing to hold, that the appraisal and assessment of Complainant's property for taxation was not made in accordance with the provisions and directions of the Constitution and Statutes of the State, and is illegal and void.

(5) In failing to hold that the property of complainant was illegally assessed, in that the plan of valuation followed to arrive at the assessment complained of imported into the State of North Carolina values which are elsewhere, and that such plan so followed violates the Commerce Clause of the Constitution of the United States.

(6) In failing to hold that the manner and method by which complainant's property was assessed is illegal and operates as an unjust and unlawful discrimination against complainant in violation

of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that thereby complainant is deprived of its property without due process of law and denied the equal protection of the law.

(7) In failing to hold that the action of the Commissioner of Revenue, in declining to make a reduction in the value of complainant's property commensurate with the horizontal reductions made by the taxing authorities under the North Carolina law permitting such reductions on other property generally, was unjust discrimination, contrary to the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States.

139 (8) In failing to hold that the Uniformity Clause of the Constitution of North Carolina, and the Fourteenth Amendment to the Constitution of the United States, in the appraisal and assessment of Complainant's property are violated, in that Complainant's property is, as alleged by the State, assessed at its true value for taxation, while the property of the other taxpayers in the State is appraised and assessed for taxation at less than its true value.

(9) In failing to hold that the property of Complainant was not assessed for taxation in the same manner and by the same method as the property of other taxpayers, and that the manner and methods by which complainant's property is appraised and assessed for taxation operates as an unjust and unlawful discrimination against complainant, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and of the provisions of Article V, Section 3 of the Constitution of the State, and is therefore illegal and void.

(10) In failing to hold that the ad valorem assessment being in excess of true value for taxation, the so-called Franchise Tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

(11) In failing to hold that the so-called Franchise or Privilege tax is in truth and in fact an additional ad valorem or property tax upon complainant's property and is illegal and invalid because levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State and the en-
140 forcement of such void statute deprives complainant of its property without due process of law contrary to the Constitution of the United States.

(12) In failing to hold that the so-called Franchise or Privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in inter and intrastate commerce and is therefore a burden upon interstate commerce in violation of the Commerce Clause of the Constitution of the United States.

(13) In failing to hold that the privilege or license tax imposed upon complainant under Section 32 of the Revenue Laws of the State

of North Carolina (Chapter 34 Public Laws, 1921) is a license tax, imposed upon complainant, for the privilege of engaging in and carrying on the business of a common carrier of interstate commerce by railroad, and as such was a regulation of and burden upon interstate commerce, and as such illegal and void, being in conflict with the Commerce Clause of the Constitution of the United States.

(14) In failing to hold that section 32 (3½) of the Revenue Laws of the State of North Carolina, applied to Railroad Companies, and denied to complainant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, and violated the Uniformity Clause of the Constitution of the State (Article V, Sect. 3), and that the franchise tax levied under Section 32 is illegal and void.

141 (15) In failing to hold that the payment of the so-called Franchise or Privilege tax is exacted as a condition precedent to the right of complainant to do "any business" in the State, whether interstate or intrastate, and, therefore, unconstitutional and void.

(16) In failing to hold that the assessment made is void, in that it includes in the value used as a basis for arrival at the franchise or privilege tax the value of property not used in the business for which the privilege is exacted, and such law and the enforcement thereof, in the manner set forth, violates the Fourteenth Amendment to the Constitution of the United States.

(17) In holding that complainant in its pleadings did not state a cause of action as to the Franchise Tax, which if supported by proof, entitled complainant to have an interlocutory injunction against the collection thereof, as prayed.

(18) In holding that complainant did not, upon the hearing of the motion, adduce such proof as to the Franchise or Privilege Tax as entitled complainant to an injunction as prayed for.

(19) In failing to hold that the franchise or privilege tax imposed upon complainant under section 32 (6½) of the Revenue Laws of the State of North Carolina, (Chapter 34, Public Laws, 1921), while called a franchise tax for the privilege of doing business in the State, is in truth and fact a tax upon property, levied in violation of Article V of the Constitution of the State, and is illegal and void.

(20) In failing to hold that complainant in its pleadings
142 stated a cause of action, as to the manner, method and amount of the assessment, and appraisal of complainant's property for taxation, which if true, entitled complainant to have an interlocutory injunction as prayed for.

W. B. RODMAN,
Solicitor for Complainant.

Of Counsel:
JOHN M. ROBINSON.
W. B. RODMAN, JR.
C. M. BAIN.

Filed at Wilson, N. C., March 30, 1922. H. G. Connor, U. S. Dist. Judge.

143 *Order Denying Stay.*

Filed Apr. 18, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY, Plaintiff,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This matter coming on to be heard at Raleigh, North Carolina, on April 15, 1922, on application of plaintiff for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18, 1922, until the appeal heretofore taken shall have been heard, passed upon, and disposed of by the Supreme Court of the United States, and all parties being represented by counsel now before the Court:

The Court, being of the opinion that the application to continue in effect the thirty day stay granted March 18, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this Court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States, denies the application for continuance of said stay until the appeal is decided by the Supreme Court of the United States.

And it apparing to the Court that the hearing of this application has been delayed through no fault of plaintiff's, and the Court being of the opinion that the status quo should be continued until the application for restraint pending the appeal can be made to and decided by the Supreme Court of the United States, Orders that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order.

EDMUND WADDILL, JR.,
U. S. Circuit Judge, Fourth Judicial Circuit.
JAS. E. BOYD,
U. S. District Judge, Western District of North Carolina.
H. G. CONNOR,
U. S. District Judge, Eastern District of North Carolina.

144 *Stipulation of Counsel as to Record.*

Filed Apr. 15, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

It is stipulated and agreed by and between the parties to the above entitled cause:

That the Clerk, in making up the transcript of record on this appeal from the Order denying complainant's motion for an interlocutory injunction, shall include all pleadings, orders, motions, stipulations, affidavits, and exhibits, constituting the entire record before the Court, except there may be omitted from the record the following:

(1) The Clerk shall not include as a part of the transcript the individual affidavits of the Registers of Deeds of the 100 Counties in the State of North Carolina, together with the tabulated lists of conveyance recorded from January 1, 1921, to June 30, 1921, and setting forth opposite each conveyance the consideration in the deed and the assessed value for taxation of the property conveyed.

(2) Return of the service of the notice of the hearing on complainant's application for an interlocutory injunction.

(3) Return of the service of the writ upon the various defendants.

The Clerk shall include as a part of the transcript one of the said affidavits, to-wit, that of C. M. Weeks, of Beaufort County, North Carolina, together with the tabulated statement of deeds re-
145 corded and the deed value of each parcel conveyed and the assessed value for taxation of each parcel so conveyed, these being typical of all as to the form and character of information contained therein. It is unnecessary to set forth the individual affidavits of deed and tax value taken from the records of each separate County in the State, because the information shown on said separate affidavits, containing the deed value of 7,431 separate conveyances and a comparison of the tax assessment of each said parcel, is cummarized in the affidavit of C. J. O'Brien which is to be included in the transcript.

It is further stipulated that the Clerk may use in preparing the record on appeal printed copies of all such pleadings, documents, affidavits, etc., as may be furnished by the parties hereto.

W. B. RODMAN,
Solicitor for Complainant.
JAMES L. MANNING,
Solicitor for Defendants,
Attorney General of N. C.

146 *Additional Stipulation as to the Record.*

Filed Apr. 22, 1922.

In the United States District Court, Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Agreement of Counsel.

In this cause it is agreed that the following papers need not be included in the transcript of record for United States Supreme Court.

Subpœna duces tecum for A. D. Watts;
Subpœna duces tecum for W. T. Lee and R. O. Self;
Motion of complainant for bill of particulars;
Interrogatories of complainant;
Defendants' objections to interrogatories;
Order sustaining defendants' objections;
Order denying motion to make answer definite.

(S.) JAMES S. MANNING,
Solicitor for Defendants and Attorney General of North Carolina.
(S.) JOHN M. ROBINSON,
Solicitor for Complainant.

147 *Memorandum of Original Papers Certified Separately.*

Petition for Appeal filed April 15, 1922.
Appeal allowed Apr. 15, 1922.
Appeal Bond dated April 17, 1922; penalty $1,000.00; Obligors:

Norfolk Southern Railroad Company and United States Fidelity & Guaranty Company: Conditioned for damages and cost.

Citation dated April 15, 1922; service accepted April 15, 1922, by James S. Manning, Attorney General of North Carolina, for A. D. Watts, Commissioner of Revenue, and other defendants.

148 *Order to Transmit Record.*

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Order to Transmit Record.

And thereupon it is ordered by the Court here that a transcript of the record and proceedings in said suit be transmitted to the *to the* United States Supreme Court at Washington, D. C., and the same is transmitted accordingly.

S. A. ASHE,
Clerk United States District Court.

149 *Clerk's Certificate.*

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Clerk's Certificate.

I, S. A. Ashe, Clerk, United States District Court, for the Eastern District of North Carolina, do hereby certify that the foregoing pages present a full, true and correct copy of the proceedings had and orders entered in that certain suit in equity pending in said Court,

wherein Norfolk Southern Railroad Company is complainant and A. D. Watts, Commissioner of Revenue of North Carolina, and others are defendants.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said District Court at the Courthouse in Raleigh. State of North Carolina, this 5 day of May, 1922.

[Seal of United States District Court, Eastern District of N. C., at Raleigh.]

S. A. ASHE,
Clerk United States District Court.

150 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

To the Honorable H. G. Connor, District Judge of the United States for the Eastern District of North Carolina:

The Norfolk Southern Railroad Company, the above named Complainant, feeling aggrieved by the Order of the Court, (consisting of Circuit Judge Waddill and District Judges Boyd and Connor, convened under Section 266 of the Judicial Code of the United States), entered in the above entitled cause on the 18th day of March, 1922, refusing and denying the interlocutory injunction applied for in this cause to restrain the defendants, until the cause could be heard on its merits, does, as provided in Section 266 of the Judicial Code of the United States, hereby appeal to the Supreme Court of the United States from the Order refusing and denying the interlocutory injunction applied for upon the grounds set forth in the assignments of error filed herewith, and Complainant prays that its appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings, and documents upon which said appeal is based, duly authenticated, be sent to the Supreme Court of the United States, under the rules of such Court in such cases made and provided.

And Complainant further prays that an order be entered continuing in effect the thirty day stay granted by said Court in its Order entered March 18, 1922, until the appeal herein prayed for shall have

been heard, passed upon, and disposed of by the Supreme Court of the United States.

NORFOLK SOUTHERN RAILROAD COMPANY,
By W. B. RODMAN,
Solicitor.

Of Counsel:
JOHN M. ROBINSON.
W. B. RODMAN, JR.
C. M. BAIN.

151 [Endorsed:] No. 439 Eq. Norfolk Southern Railroad Company vs. A. D. Watts and Others. Petition for Appeal. I certify that the within is entered and filed this day. Apr. 15, 1922. S. A. Ashe, Clerk.

152 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY, Plaintiff,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This matter coming on to be heard on the application of plaintiff for an appeal to the Supreme Court of the United States, under Section 266 of the Judicial Code of the United States, from the decree entered in this cause on the 18th day of March, 1922, refusing and denying the interlocutory injunction applied for; and upon the assignment of errors filed in said cause and presented to the Court with the said application for appeal and for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18th, 1922, until the appeal prayed for shall have been heard, passed upon, and disposed of by the Supreme Court of the United States;

And all parties being represented by counsel now before the Court on due notice.

It is ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the order and decree filed and entered herein on the 18th day of March, 1922, refusing and denying the interlocutory injunction prayed for, upon the giving of bond in the sum of $1,000.00.

It is further ordered that citation of appeal issue and be served upon the defendants or their attorneys of record, and that the Clerk of this Court prepare and forward to the Supreme Court of the

United States a transcript of the record of the proceedings, pleadings, affidavits, etc., upon which the judgment herein was rendered, duly authenticated.

This 15th day of April, 1922.

H. G. CONNOR,
U. S. District Judge, Eastern District of North Carolina.

152½ [Endorsed:] #439 Eq. Norfolk Southern R. R. Co. vs. A. D. Watts. Order Granting Appeal. I certify that the within is entered and filed this day. Apr. 15, 1922. S. A. Ashe, Clerk.

153 *Appeal Bond.*

Filed 22 day of April, 1922. S. A. Ashe, Clerk.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

NORFOLK SOUTHERN RAILROAD COMPANY, Plaintiff,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Know all men by these presents: That we, Norfolk Southern Railroad Company, a corporation organized and existing under the laws of the State of Virginia, as principal, and United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto the above named A. D. Watts and the other defendants in the sum of One Thousand Dollars, to be paid to the said A. D. Watts and other defendants, their successors and assigns, to which payment, well and truly to be made, we bind ourselves and our successors jointly and severally by these presents.

Sealed with our seals this 17th day of April, 1922.

Whereas, in a suit pending in the District Court of the United States for the Eastern District of North Carolina between Norfolk Southern Railroad Company, plaintiff, and A. D. Watts, et al., defendants, a decree was rendered by the Court consisting of Circuit Judge Waddill and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code, denying plaintiff an interlocutory injunction as prayed for, and the said Norfolk Southern Railroad Company having prayed and been allowed an appeal under Section 266 of the Judicial Code of the United States direct to the Supreme Court of the United States, and filed a copy thereof in the Clerk's office of the said Court, and citation having issued directed to the said A. D. Watts, et al., citing and admonishing them

to be and appear in the Supreme Court of the United States within the time required by law.

Now, the condition of the above obligation is such, that if the said Norfolk Southern Railroad Company, shall prosecute its said appeal to effect, and answer all damages and costs if it fails to make
154 its appeal good, then the above obligation shall be void, else to remain in full force and effect.

NORFOLK SOUTHERN RAILROAD COMPANY,
By W. B. RODMAN,
Attorney.

[Seal of United States Fidelity & Guaranty Company.]

UNITED STATES FIDELITY & GUARANTY COMPANY,
By MARGARET W. WALKER,
Atty.-in-Fact.

Approved this 18th day of April, 1922.

H. G. CONNOR,
United States District Judge.

155 [Endorsed:] #439. Eq. Norfolk Southern Railroad Co. vs. A. D. Watts et —. Appeal Bond. I certify that the within is entered and filed this day, Apr. 22, 1922. S. A. Ashe, Clerk.

156 *Citation.*

Filed 15th Day of April, 1922, S. A. Ashe, Clerk.

UNITED STATES OF AMERICA:

The President of the United States to A. D. Watts and A. D. Watts as Commissioner of Revenue, et al., Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be holden in the City of Washington, on the 8th day of May, next, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of North Carolina, wherein Norfolk-Southern Railroad Company is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said appeal mentioned, should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand in the City of Raleigh, N. C., in the District above named, this 15th day of April, 1922.

H. G. CONNOR,
Judge of the District Court of the United States for the Eastern District of North Carolina.

Service of within citation accepted for all defendants April 15, 1922.

A. D. WATTS,
Commissioner of Revenue, and other defendants.
By JAMES I. MANNING,
Attorney General of North Carolina.

I certify that the within is entered and filed this day, Apr. 15, 1922.

S. A. ASHE,
Clerk.

Endorsed on cover: File No. 28,917. E. North Carolina D. C. U. S. Term No. 962. Norfolk Southern Railroad Company, Appellant, vs. A. D. Watts and A. D. Watts as Commissioner of Revenue of the State of North Carolina. Filed May 8th, 1922. File No. 28,917.

(6548)

OCT 30 1922
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

No. 368.

SOUTHERN RAILWAY COMPANY,
Appellant,

vs.

A. D. WATTS, ET AL.,
Appellees.

BRIEF FOR APPELLANT.

S. R. PRINCE,
Counsel for Plaintiff.

L. E. JEFFRIES,
W. M. HENDREN,
C. O. AMONETTE,
Of Counsel.

PRESS OF THE SUDWARTH CO., WASHINGTON

TABLE OF CONTENTS

PAGE

Statement of the Pleadings 2
Statement of the Case 6
Assignment of Errors 21
Brief of the Argument 26
Jurisdiction 26
Construction of Tax Statutes 26
Ad Valorem Assessment 27
Illegality of Assessment Due to Non-Uniformity and discrimination 30
Discrimination Among Members of the Same Class 32
Franchise Tax 32
Argument 37
Jurisdiction 37
Construction of Tax Statutes 42
Ad Valorem Assessment 43
1. The North Carolina Taxing Authorities Failed to Follow the Statutory Method Prescribed and Assessment Is Invalid 43
2. Assessment in Excess of True Value in Money of Said Property for Tax Purposes 55
Rate at Which Net Should Be Capitalized 60
3. State Capitalized Net Earnings at Improper Rate 60
4. Assessment Complained of Invalid Because It Imports Into the State of North Carolina Values Which Are Elsewhere 64
Illegality of Assessment Due to Non-Uniformity and Discrimination 65
5. Failure of Commissioner of Revenue to Give to Plaintiff Similar Horizontal Reductions Made by County Authorities on Real Estate Situated in Counties Renders Assessment Void 65
Real Estate Generally in State Assessed at 67 per cent of Value, Whereas Plaintiff Assessed at True Value, Renders Assessment Illegal 65
Discrimination Among Members of the Same Class 74
6. In the Assessment of Railroad Properties Different Methods of Assessment Were Used in the Valuation of Different Members of the Same Class to Plaintiff's Harm 74
Franchise Tax 78
1. So-called Franchise Tax Is a Property Tax and Void .. 78
2. The Tax Is Measured by the Property Owned in the State and Is Not a Privilege Tax 89

3. The Amount of Franchise Tax Is Double the Amount It Should Be Under Section 82(3½) of the North Carolina Revenue Law 92
4. If the Tax Levied Under Section 82(6½) Is a Franchise Tax, It Is Invalid in That It Is an Unconstitutional Burden on Interstate Commerce..... 95
5. The Franchise Tax Law Is Invalid in That It Imposes a Condition upon the Right of This Foreign Corporation Engaged in Interstate Commerce to Transact Interstate Commerce 109

Principles Governing Issuance of Interlocutory Injunctions.....118

Appendix 124

TABLE OF CASES CITED

PAGE

Adams Express Co. vs. Ohio, 165 U. S., 194, 220.....35, 102
Allison vs. Corson, (C. C. A. 8th Cir.) 88 Fed., 581, 584.....122
Atlantic, etc., Telephone Co. vs. Philadelphia, 190 U. S., 160, 162,-163 .....35, 97
Borden's Condensed Milk Co. vs. Baker, 177 Fed., (C. C. A. 4th Cir.) 906 41
42 Broadway vs. Anderson, 209 Fed., 991-3.....26, 42
Chicago, etc., Co. vs. State Board of Equalization, 114 Fed., 557, 561 .....30, 63
Chicago & E. I. vs. State, 51 N. E. 924.....34, 87
Chicago, M. & St. P. vs. Kendall, 278 Fed., 298.....32, 71
Choctaw vs. Harrison, 235 U. S., 292.....33, 79
Consolidated Gas Case, 157 Fed., 849, 870.....30, 62
Consolidated Gas Case, 212 U. S., 19, 48.....30, 62
Crew Levick Co. vs. Pennsylvania, 245 U. S., 292, 368.....33, 80
Davis vs. Wallace, decided by U. S. Supreme Court Jan. 9, 1922....27, 46
Fargo vs. Hart, 193 U. S., 490.....30, 65
Galveston vs. Texas, 210 U. S., 217, 227.....33, 80, 103, 106, 108
Glascott vs. Lang, 3 Myl. & C., 451, 455.....120
Great Western R. Co. vs. Birmingham, etc., R. Co., 2 Phil. Ch., 597..120
Greene vs. L. & I. R. R., 244 U. S., 499, 506.....26, 31, 39, 71, 73
Harriman vs. Northern Securities Co., 132 Fed., 464, 477.....120
Harrisburg vs. Texas, 210 U. S., 217, 225, 249.....35, 102
Illinois Central vs. Railroad Commission, 229 Fed., 248, 255.....37, 113
International Paper Co. vs. Mass., 246 U. S., 135.....97, 108
Kansas City Ry. vs. Kansas, 240 U. S., 227, 231.....35, 102
King vs. Northern Pac., 196 Fed., 323..... 40
Lacey vs. Armour Packing Co., 134 N. C., 567..... 84

Lincoln Gas Co. vs. Lincoln, 250 U. S., 256, 267.....30, 64
Long Dock Co. vs. State Board of Assessors, 92 Atl., 439, 441-2..... 59
Louisville & Nashville vs. Greene, 244 U. S., 522, 536.....27, 45
Ludwig vs. Western Union, 216 U. S., 146, 156.....37, 111
Oklahoma vs. Wells Fargo & Co., 223 U. S., 198..... 91
People vs. Knight, 174 N. Y., 475; 67 N. E, 65.....34, 88
Pioneer T. & T. Co. vs. Westenhaver, 29 Okl., 118 Pac., 354.....30, 62
Postal Telegraph & Cable Co. vs. Adams, 155 U. S., 688, 695.....35, 102
Provident Institution vs. Mass., 6 Wall., 611, 630, 631.....34, 85
Purnell vs. Page, 153 N. C., 125..... 41
Range Co. vs. Carver, 118 N. C., 328..... 41
Raymond vs. Chicago, etc., 207 U. S., 20, 35-6.....32, 72, 76
St. L. & S. W. vs. Arkansas, 235 U. S., 350, 362, 368.....
.....33, 36, 37, 80, 107, 114
San Diego Water Co. vs. City of San Diego, 118 Cal., 556.....30, 61
Shaffer vs. Carter, 252 U. S., 37, 46.....26, 38
Smyth vs. Ames, 169 U. S., 466..... 40
Southern Ry. vs. North Carolina, 97 Fed., 513-18.....26, 42
State vs. French, 109 N. C., 722..... 84
State vs. Stonewall Ins. Co., 89 Ala., 335.....34, 87
Sundaylake Iron Co. vs. Wakefield, 247 U. S., 350-2.....32, 72
Taylor vs. L. & N., 88 Fed., 350, 364-71.....32, 71, 73
Tremont vs. Lowell, 59 N. E., 1007.....34, 87
Twine Co. vs. Worthington, 141 U. S., 468, 474..... 26
Underwood Typewriter Co. vs. Chamberlain, 254 U. S., 113, 119....37, 114
Union Pac. vs. Colorado, 247 U. S., 282, 286.....26, 40
Union Transit Co. vs. Kentucky, 199 U. S., 194.....30, 65
United States vs. Wigglesworth, 2 Story 369..... 26
United States Life Ins. Co. vs. Cable, 98 Fed., 761..... 40
Wallace vs. Hines, 253 U. S., 66-7.....26, 37
Wells Fargo vs. Nevada, 248 U. S., 165, 167.....35, 102
Western Union vs. Kansas, 216 U. S., 1, 26.....35, 105, 107, 108
Worth vs. Railroad, 89 N. C., 301.....33, 81

22 Cyc. 751 119
10 Encyc. Pl. & Pr., 1010.....119
1 High on Injunctions, Sec. 5, p. 8.....118
57 L. R. A., 48..... 88
14 R. C. L., 375.....120

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922

IN EQUITY
No. 368

SOUTHERN RAILWAY COMPANY,
Appellant,

vs.

A. D. WATTS, ET AL.,
Appellees.

BRIEF FOR APPELLANT.

This is an appeal direct to this Court under Section 266 of the Judicial Code from the order of the United States District Court for the Western District of North Carolina, constituted of three judges for the hearing of the application, denying the application of Southern Railway Company for an interlocutory injunction.

Statement of the Pleadings.

1. On September 22, 1921, appellant (hereinafter called plaintiff) filed its bill in the United States District Court for the Western District of North Carolina, making as defendants thereto A. D. Watts individually and as Commissioner of Revenue of the State of North Carolina, Baxter Durham, Auditor of the State of North Carolina, Benjamin R. Lacey, Treasurer of the State of North Carolina, James S. Manning, Attorney General of the State of North Carolina, and forty-six Sheriffs of the several counties in North Carolina through which appellant operated and paid taxes, and ninety-seven Tax Collectors of the cities and towns through which appellant operated and paid taxes, and thirteen Tax Collectors of Special or Graded School Districts in which appellant operated and paid taxes. The necessity for having one hundred and sixty defendants was that the Revenue Commissioner certified the assessment complained of to the several counties, cities and school districts so soon after the fixing of the assessment as that plaintiff had not an opportunity to enjoin the certification and therefore was compelled to enjoin the tax collecting officers of the State in each tax district from collecting taxes on the assessment which had been so certified.

2. The bill filed sought to enjoin the State's taxing officers (1) from collecting property taxes upon an excessive ad valorem assessment of $96,-

306,357.00; (2) from collecting a franchise tax under a void Franchise Tax Law; (3) from collecting a franchise or privilege tax based upon an excessive assessment of $96,306,357.00.

It charged that the assessment made was in excess of true value; that the method prescribed was contrary to the statutes of North Carolina; that values outside of North Carolina were imported into North Carolina because of the method employed; that horizontal reductions in the assessed value of real property in the Counties and the declination of the Revenue Commissioner to make similar reductions in plaintiff's right of way, lands, and structures thereon discriminated against plaintiff; that plaintiff's property is assessed in excess of its true value and the property of other taxpayers habitually and customarily assessed at less than true value; that the so-called franchise tax was a property tax and not a franchise tax; that it was exacted as a privilege for engaging in interstate commerce; and was not levied in accordance with the statutes of North Carolina.

3. Plaintiff, at the time of filing its bill, made application for an interlocutory injunction under Section 266 of the Judicial Code. The District Judge entered an order fixing October 6, 1921, for hearing the application for an interlocutory injunction and directing that not less than five days' notice be given the Governor and the Attorney General of the State of North Carolina, and calling to his assistance to hear the application, Ed-

mund Waddill, Jr., United States Circuit Judge, and Henry G. Connor, United States District Judge for the Eastern District of North Carolina, and giving notice of the hearing to all defendants.

4. October 6, 1921, the Three-Judge Court assembled, defendants filed a motion to dismiss bill, which was denied. The plaintiff, by its counsel, and the defendants, through the Attorney General of North Carolina, on October 6, 1921, entered into a stipulation, which stipulation was approved by the three-judge bench and filed as a part of the record in this cause (63). The plaintiff in the stipulation agreed to pay and has paid all taxes, other than the franchise tax, as they might come due on an assessed valuation of sixty million dollars (the assessment complained of as being excessive and otherwise void being $96,306,357.00). The defendants agreed not to demand or collect or begin proceedings of any character for the nonpayment of said taxes on any valuation in excess of said sixty million dollars "until the further order of the Court or pending this action." The Court entered an order based upon the stipulation, reciting that the application for preliminary injunction had been continued by agreement of parties in order that the defendants might have time to answer and prepare their defense.

5. November 30, 1921, defendants filed their answer. The answer denied that there was an overassessment of plaintiff's property; averred that the assessment of plaintiff's property was at its

true value; denied any discrimination; averred that the assessment was made in accordance with the statutes; denied that the franchise tax was a property tax; denied that the franchise tax was assessed on any improper amount; and denied that the franchise tax was a burden upon interstate commerce. In short, it took issue with practically all material averments of the bill. Thereafter, plaintiff and defendants, within the time stipulated, filed affidavits in support of and against the application for interlocutory injunction.

6. January 24, 1922, the application for interlocutory injunction was heard by the Three-Judge Court.

7. March 18, 1922, the Three-Judge Court filed its per curiam opinion, which, without expression of reasons therefor, held that plaintiff had not made such a case as entitled it to an interlocutory injunction as prayed for and entered on the same day an order refusing and denying the injunction as prayed for. This order concluded as follows:

> "And it is further ordered that the defendants shall not proceed to enforce the collection of taxes involved in this litigation, for the period of thirty days from the date of this order, to the end that complainant may take such action in the premises as it is advised to."

8. March 31, 1922, plaintiff filed its petition for appeal and for an order staying the proceed-

ings pending appeal to the Supreme Court. This petition was continued at the request of the State, as shown by the Court's order, to April 10, 1922.

9. The appeal was granted, the stay of proceedings was denied, and petition was thereafter filed in this Court asking that the defendants be restrained pending the decision of this Court on this appeal. This Court, on May 29, 1922, denied the motion for a stay with leave to apply to the District Court for a stay until the matter could be disposed of here. Thereafter a further application was filed in the lower court for a stay and the Three-Judge Court, after hearing the matter, in July, 1922, granted a restraining order until the hearing and determination of this appeal.

Statement of the Case.

Section 3 of Article 5 of the Constitution of North Carolina* provides that taxation shall be by uniform rule and ad valorem and that all real and personal property shall be taxed according to its true value in money. Section 6 of Article 5 provides that the total of State and County taxes on property shall not exceed 15c on $100 value of property, with exceptions not material to this case, and provides that the State tax shall not exceed 5c on $100 value of property. Section 9 of Article

*For the convenience of the Court, in the Appendix hereto the Sections of the North Carolina Constitution and statutes referred to are set out in full.

7 provides that all taxes levied by any County, City, Town, or Township shall be uniform and ad valorem.

Prior to and for the year 1919, railroad property in the State of North Carolina was assessed for taxation relatively higher than other property (72).† For the year 1919, the property of appellant, Southern Railway Company, was assessed at the sum of $46,869,942.00 (9). In 1919, the Legislature of North Carolina passed the Revaluation Act (Chapter 84, Public Laws of North Carolina, 1919) (47). It was provided in this Act (Section 4), that all property, real, personal and mixed, shall be valued according to its true value in money; and that such property shall be valued as of the first day of May, 1919, and when completed shall become the value to be used for all tax purposes for the years 1920, 1921, 1922 and 1923 (47) (the assessment was subject to change by provisions, Act 1921). It was further provided (Section 31) that the State Tax Commission, which was then charged with the duty of assessing railroad property, could require of each railroad a sworn estimate, by a responsible officer of the Company, of the cost of reproduction of the properties of such Company new, including sidetracks, doubletracks, and all property owned by such Company in the State, less reasonable depreciation for such of its properties as have depreciated in value.

It was provided in Section 64 of Chapter 92 of

†Such figures in each case are to the record pages.

the Acts of 1919 that the value of the tangible property of a railroad "shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property"; that then the value of the franchise shall be determined "by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds or any other securities, the value of which is based upon the earning capacity of the property"; and that "the aggregate value of the physical or tangible property and of the franchise, as thus determined, shall be the true value of the property for ad valorem taxation."

It was provided in Section 65 of Chapter 92, Acts of 1919, that where a railroad has a part of its road in the State of North Carolina and a part in any other State, the State Tax Commission shall ascertain its value as provided in Section 64 and divide it in the proportion to the length of such main line of road in this State bears to the whole length of such main line of road, and determine the value in this State accordingly, provided the Commission shall take into consideration certain factors that would give a greater or less value per

mile of road in North Carolina than the average value for the entire system.

In response to the request of the State Tax Commission, Murray R. Hubbard, Tax Commissioner of Southern Railway Company, furnished the Commission a mass of detailed information as to the cost of reproduction of the properties of Southern Railway Company in the State of North Carolina. The information furnished was correct and accurate as to rolling stock and equipment, but as to the physical value of the property, it was stated that the information furnished was as complete as the limited time given for its preparation permitted. It subsequently developed that the values presented approximated the value given out by the Bureau of Valuation of the Interstate Commerce Commission in their tentative report, as set forth in the verified bill in this case (116). In furnishing this information the Tax Commissioner advised the Commission that it would not be possible to furnish the information asked for at any reasonable cost or at any cost within a period of several years (97, 116). The State Tax Commission declined to consider the information furnished, stating that it was worthless for the purpose furnished (97, 116).

The State Tax Commission arrived at a tentative valuation of the property of Southern Railway Company in North Carolina and of certain lines in which Southern was interested, but independently operated, namely—Atlantic & Yadkin,

High Point, Randleman, Asheboro & Southern, and Yadkin Railroad Companies, in the sum of $111,-308,325.00 (99). This sum was in fact the proportion of the investment account of the Southern Railway Company which the gross earnings of that Company within the State of North Carolina bore to the total gross earnings of the Southern Railway Company for the entire system (99). The Tax Commission did not base any estimate of value upon the market value of stocks and bonds, as required in Section 64 of Chapter 92 of the Acts of 1919, because in the opinion of the Commission a satisfactory estimate of value could not be based upon the market value of the stocks and bonds of these companies on the first day of May, 1919, for the reason that the limited market and the limited number of shares and bonds sold on the market did not furnish a fair index of the actual value of these properties as a whole, and more particularly did not furnish an index of the actual value of the properties of these companies located within the State of North Carolina (98 and 99). Nor did the Commission, as before pointed out, give consideration to the cost of reproduction as required by Section 64 of Chapter 92 of the Acts of 1919 (97). Nor did the Commission consider that the actual value of these properties could be fairly determined by their earnings, until there should be a fair return to normal conditions of operating costs, flow of traffic and stabilization of transportation rates (99), though Section 64 of Chapter 92

of the Acts of 1919 expressly require that earnings be considered.

Notice of this tentative valuation was given to the Southern Railway Company and to the other Companies and hearing was had thereon. Mr. Hubbard appeared for the Southern Railway Company and its other Companies independently operated and insisted that the Southern Railway Company's investment account was not a true index of the value of the property in North Carolina for tax purposes (116).

At this hearing Southern Railway Company proved that the net earnings for the System as a whole showed an average for the five years of 1915-1919 of $21,889,648.00, which sum capitalized at seven per centum, showed a valuation for the System of $312,709,260.00 and a valuation for North Carolina of $68,170,618.00, under the gross earnings ratio of 21.8 per cent. The Company further proved the total par value of the outstanding stocks and bonds of Southern Railway Company, the amount of gross revenue and operating expenses allocated to the State of North Carolina for the five year period 1915-1919, and also the amount of taxes paid in said State (66).

It was shown to the Tax Commission that the average annual net earnings reported to North Carolina for the five year period were $6,117,625.00, but that the operating expenses allocated to North Carolina during that period were under-

stated so that the average net earnings of $6,117,-625.00 was not a fair basis for valuation of the property in North Carolina (66). Under existing accounting methods of allocating expenses to North Carolina, operating expenses so allocated are understated and net income overstated in this: That only expenses accruing within that State are charged to State expenses, while a large volume of traffic passing through that State is assembled or originates at and is destined to terminal points without North Carolina, at which large terminal operating expenses accrue, no part of which expense is apportioned to North Carolina (10 and 11). This method of ascertaining the net income in North Carolina and using the sum so ascertained in arriving at the value of plaintiff's property works to the disadvantage of plaintiff in this: (a) the traffic which moves through the State of North Carolina, that is, has both origin and destination outside of the State, is 43 per cent of the total traffic, and, therefore, North Carolina escapes terminal expenses on a large volume of the total traffic; and (b) the terminal expenses on traffic originating or destined to North Carolina are very much less than those without the State at points like Atlanta, Birmingham, Pinners Point, Brunswick, Memphis, St. Louis, Potomac Yards, etc. (11 and 80).

The Company further proved that the annual return upon capital invested in banking, merchandise, and other enterprises in North Caro-

lina was at least 8 per cent; that no railroad securities yielding 6 per cent were at the time selling at their par value in the market; that railroads enjoying the highest credit in the country, including Southern Railway Company, were paying as much as 7½ per cent for money; and that these facts should be considered by the Commission in determining a fair percentage to use in capitalizing (66, 89, and 96).

The Tax Commission concluded to use the plan of capitalizing the net earnings in North Carolina and at first found a value arrived at by capitalizing at 7 per cent North Carolina net operating revenue for the years 1915-1919 without making deduction for taxes paid in the State of North Carolina, which, for the year 1919, amounted to more than $922,000.00. The value thus arrived at was $103,730,071.00 for Southern Railway Company and certain independently operated companies. Southern Railway Company protested so vigorously against the failure to make a deduction of the amount of taxes paid that the Tax Commission thereafter changed its plan and arrived at an assessment of $101,960,400.00 by capitalizing the average net earnings in North Carolina (99) for the five years 1915-1919, amounting to $6,117,625.00, but changed the percentage of capitalization to 6 per cent instead of 7 per cent which had been used before deducting taxes. The sum of $101,960,400.00 was apportioned as follows: Southern Railway Company, $96,605,694.00; At-

lantic & Yadkin, $4,104,710.00; High Point, Randleman, Asheboro & Southern, $688,895.00; and Yadkin, $561,114.00 (66 and 67).

The revaluation was approved by the Legislature of North Carolina (Chap. 1 Public Laws 1920) except as thereafter changed by the Legislature.

In 1920, Southern Railway Company paid taxes under protest on the assessment arrived at as aforesaid (15). The protest was made because of the illegality of the assessment made, but the tax was paid because the amount in actual taxes to be paid was not substantially different from what it was in 1919 due to the fact that no State taxes were imposed, and no reduction had been made in the assessment of other property supposed to have been revalued and brought to true value.

In 1921, the Legislature of North Carolina enacted further legislation. By Chapter 40 of Acts of 1921, the powers and duties of the State Tax Commission were transferred to and imposed upon the Commissioner of Revenue (35). Under the old system the State Tax Commission assessed the property of railroads for taxation (7 and 51), except property off the right of way assessed by local assessors, and acted also as a State Board of Equalization. After the powers and duties of the State Tax Commission were transferred to the Commissioner of Revenue, that officer became the assessing officer for railroad property, and the powers and duties of the State Tax Commission as a Board of Equalization were transferred to a State Board of

Equalization composed of the Commissioner of Revenue, the Chairman of the State Corporation Commission and the Attorney General.

Sections 64 and 65 of Chapter 92, Public Laws of 1919, were re-enacted as Sections 64 and 65 of the Machinery Act, Chapter 38, Public Laws of 1921, and contain the provisions hereinbefore referred to. In addition, Section 28(a) of the Machinery Act of 1921 provided that the board of county commissioners and county board of appraisers and review should meet jointly in each county on the first Tuesday after the first Monday in April, 1921, as a county board of review, to determine if the value of real property as heretofore appraised and assessed (that is the revaluation figure which otherwise would have lasted for years 1920, 1921, 1922 and 1923) in the county as a whole is in excess of the fair value of such property at the time of the meeting of such board. Should such boards of review find the assessed value of property to be in excess of actual value, it shall find the average percentage of such excess in the county as a whole and report its finding to the State Tax Commission (State Board of Equalization), and the values so reported shall be the values at which property shall be assessed for taxation unless and until changed and revised by the State Board of Equalization and certified to the Board of County Commissioners.

Acting under this Section, the respective county boards of review made horizontal reductions in

sixty-seven counties in the state (48), thirty-two counties through which Southern Railway Company operates, varying from 10 per cent to 50 per cent, and increased the rate of taxation in amounts varying from 10 to 84 cents per $100, and upon report of their action to the State Board of Equalization, the assessments so horizontally reduced were not revised or changed by such Board, and remain the value at which the property other than railroads is now assessed (16, 24 and 25).

Section 28(g) of the Machinery Act, 1921, provided that any taxpayer owning property assessed originally by the State Tax Commission might make application to the State Tax Commission (Commissioner of Revenue) for a review of the assessment of its property in the same manner provided for complaint by property owners before the county boards, and the State Tax Commission (Commissioner of Revenue), was given authority to hear and determine complaints. Under Section 28(b) the Board of County Commissioners was given authority to hear specific complaints of overvaluation or undervaluation of any particular tracts of real property after the general equalization order provided for in Section 28(a).

Southern Railway Company made application under Section 28(g) for a review of its assessment by the Commissioner of Revenue. The Commissioner of Revenue heard the application of plaintiff for a review of the assessment on June 21, 1921, and plaintiff showed the error of method

used by the State Tax Commission in fixing the value of its property at $96,605,694.00, that 6 per cent used for capitalization of net income was too low; that the market values of railroad securities were materially less than on May 1, 1919; that the cost of materials used generally in railroad construction was much less in 1921 than in 1920 or on May 1, 1919; and that the value of plaintiff's property in North Carolina including the value of the several roads operated independently was $68,170,-618.00 (67 and 68). The Commissioner of Revenue refused to make any reduction in the assessment of plaintiff's property, except to apply the horizontal reduction made on other property to property of plaintiff off the right of way, including non-carrier property, thereby reducing the value from $96,605,694.00 to $96,306,357.00 (38, 69).

Plaintiff gave notice to the Commissioner of Revenue of an appeal to the State Board of Equalization, but was thereafter advised by the State's officers that the law did not permit a hearing by the State Board of Equalization (9). The Commissioner, however, reheard the matter, proof was introduced on the various points above set forth to show the excessive valuation of Southern Railway Company but the Commissioner refused to reduce said assessment of $96,306,357.00 (69).

A comparison of the true value of real property in North Carolina for the six months, January 1, 1921, to June 30, 1921, inclusive, as shown in the

more than six thousand deeds recorded during that period, with the assessed value for the year 1921, of the property conveyed by such deeds, shows that the value of all property conveyed during such six months in the State of North Carolina was $30,598,475.24, while the assessed value of such property was $20,373,684.07. In other words, property other than railroad property, so far as could be determined by the method prescribed by law, was valued at only 66.58 per cent of its actual value (110-114).

The fair average market value available during the year 1921 for the outstanding securities of Southern Railway Company for owned and leased lines was $297,919,100.00. (In one of the affidavits (84) the figure was given as $287,049,221.00. The difference is due to the fact that in the latter figure certain securities were eliminated, the value not being based upon Southern Railway earnings (84)). The road mileage proportion of this figure, as required by Section 65 of Chapter 92 of Laws of 1919, and by Section 65 of the Machinery Act of 1921, would allocate to the State of North Carolina a value of $59,881,739.00 (13 and 84).

Railroad property in North Carolina, like other property, suffered from the general business depression prevailing in 1921. For the first six months of 1921, plaintiff, after paying operating expenses, taxes, hire of equipment and rents for joint facilities, lacked more than $4,500,000.00 of earning sufficient money to pay the interest on its bonded indebtedness (17 and 81).

The Interstate Commerce Commission has found the reproduction cost, less depreciation of the entire property of the Norfolk Southern Railroad in Virginia and North Carolina to be $26,028,366.00. The total mileage of Norfolk Southern is 900.543, of which 790.264 miles, or 87.754 per cent, are in North Carolina. The Commissioner of Revenue fixed the 1921 assessment of Norfolk Southern at $22,840,932.00, or 87.754 per cent of the valuation of $26,028,366.00 as found by the Interstate Commerce Commission (73).

The Bureau of Valuation of the Interstate Commerce Commission has found the tentative value of the cost of reproduction new of plaintiff's properties in North Carolina, except lands, estimating the lands. The value so found in North Carolina is $59,904,438.00 (13, 14).

The per annum standard return allowed plaintiff under the Federal Control Act of Congress as just compensation for the possession, use, control and operation of its properties by the Federal Government, divided on a mileage basis and capitalized at 6 per cent, gives a value to plaintiff's proprety in the State of North Carolina arrived at on this basis of $48,746,707.00 (15).

In 1920, Southern Railway Company paid to counties, cities, towns and separate school districts the sum of $652,900.49. In 1921, due to increase in rates, plaintiff has paid to counties, cities, towns and separate school districts on an agreed assessment of $60,000,000.00, pending the litigation, the sum of $688,163.75. There was an added sum of

$26,714.22 to be paid (116 and 117). The total taxes for 1920 were $920,367.05 (46), while for 1921 the total will be $1,243,715.97, if the $96,306,-357.00 is allowed to stand (117). The same assessment remains for the year 1922 and 1923, which brings the total amount of taxes dependent on the outcome of this case to a sum in excess of one million dollars for this plaintiff.

By Section 82 (6½) of Chapter 34, Public Laws of 1921, a franchise or privilege tax is imposed upon railroads for the privilege of exercising its franchise in the State. The basis upon which the tax is to be calculated and the extent to which every railroad company is exercising its franchise in the State of North Carolina shall be found to be the value of the property, tangible and intangible, of each railroad company in the State for ad valorem taxes. In other words, the franchise tax is calculated upon the value of the property for ad valorem taxes, and the amount of the tax is one-tenth of 1 per centum of such ad valorem value (8).

Section 82 (3½) of Chapter 34, Public Laws of 1921, provides that where "the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under the rules laid down in Section 82 of this Act, to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which such report is made, the measure of the extent to which the corporate franchise of any such corpora-

tion is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation in this State" (34). The proportion of the capital stock of the Southern Railway Company is less than one-half of the total assessed value of all of its property in the State (34).

The State of North Carolina also levies an income tax of 3 per centum on the net income of this corporation as provided in the Public Laws of 1921, page 203 (9).

Assignmnt of Errors (127)

The Court erred:

(1) In decreeing that the interlocutory injunction be denied.

(2) In holding that for the purpose of the motion for an interlocutory injunction only, complainant neither in its pleadings, nor upon the proof adduced, is entitled to have the interlocutory injunction applied for.

(3) In failing to hold that the assessment of complainant's property for taxation is in excess of its "true value" in money for the purpose of taxation as required by the Constitution of North Carolina and is therefore invalid.

(4) In failing to hold that the appraisal of com-

plainant's property for taxation is not made in accordance with the provisions of the Constitution and Statutes of North Carolina, and that said appraisal and assessment of taxes are invalid and illegal.

(5) In failing to hold that the property of complainant was illegally assessed, in that the plan of valuation followed to arrive at the assessment complained of imported into the State of North Carolina values which are elsewhere, and that such plan so followed violates the Commerce Clause of the Constitution of the United States.

(6) In failing to hold that the manner and method by which complainant's property was assessed is illegal and operates as an unjust and unlawful discrimination against complainant in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that thereby complainant is deprived of its property without due process of law and denied the equal protection of the law.

(7) In failing to hold that the action of the Commissioner of Revenue, in declining to make a reduction in the value of complainant's property commensurate with the horizontal reductions made by the taxing authorities under the North Carolina law permitting such reductions on other property generally, was unjust discrimination, contrary to the Uniformity Clause of the Constitution of North Carolina and the Fourteenth

Amendment to the Constitution of the United States.

(8) In failing to hold that the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States are violated, in that complainant's property is alleged by the State to be assessed at its true value for taxation, while the property of other taxpayers generally in the State is appraised and assessed for taxation at less than its true value in money and that this appraisal and assessment of the property of other citizens and taxpayers of the State has been long continued and is arrived at under a scheme of taxation which shows intent to place an undue burden of taxation upon complainant and its property.

(9) In failing to hold that the scheme of taxation of the State of North Carolina and the assessment of the properties of the various classes of taxpayers is by settled purpose and intent so designed and carried out that, while the property of complainant is assessed at its true value in money, or more than its true value in money, the large proportion of the property in the State is assessed at less than its true value in money, thereby casting an undue and excessive burden upon complainant, in violation of the Uniformity Clause of the Constitution of the State of North Carolina and in violation of the Fourteenth Amendment to the Constitution of the United States.

(10) In failing to hold that the ad valorem

assessment being in excess of true value for taxation, the so-called Franchise tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

(11) In failing to hold that the so-called Franchise or Privilege tax is in truth and in fact an additional ad valorem or property tax upon complainant's property and is illegal and invalid because levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State and the enforcement of such void statute deprives complainant of its property without due process of law, contrary to the Constitution of the United States.

(12) In failing to hold that the so-called Franchise or Privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in inter and intrastate commerce and is, therefore, a burden upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(13) In failing to hold that if the Franchise or Privilege tax be imposed for the privilege of engaging in intrastate commerce, it is measured in part by the value of the privilege of engaging in interstate commerce, in that it is based upon the entire value, including values derived from use in interstate commerce, and is, therefore a burden imposed upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(14) In failing to hold that if the so-called Franchise or Privilege tax is imposed for the privilege of engaging in intrastate commerce, the tax should have been assessed against complainant upon one-half of the ad valorem value, as provided in Section 82(3½) of the Revenue Act of North Carolina of 1921, and that the tax assessed against complainant upon the full value of its property is, therefore, contrary to law and void.

(15) In failing to hold that the payment of the so-called Franchise or Privilege tax is enacted as a condition precedent to the right of complainant to do "any business" in the State, whether interstate or intrastate, and, therefore, unconstitutional and void.

(16) In failing to hold that the assessment made is void, in that it includes in the value used as a basis for arrival at the Franchise or Privilege tax the value of property not used in the business for which the privilege is exacted and such law and the enforcement thereof in the manner set forth violates the Fourteenth Amendment to the Constitution of the United States.

(17) In failing to hold that the tax system of the State of North Carolina, which includes an ad valorem tax on the full value of its property in the State, including as a part thereof value it has due to its use in interstate commerce, plus a Franchise or Privilege tax upon the full value of the said property for ad valorem purposes, plus an income tax of three per cent on its net operating income, does in practical operation result in a burden upon interstate commerce and violates the Commerce Clause of the Constitution of the United States.

BRIEF OF THE ARGUMENT.

Jurisdiction.

The amount being in excess of $3,000.00, the claim of violation of rights under the Federal Constitution being in good faith, the showing being that a multiplicity of suits will result, that there is no adequate remedy at law, that unless restrained a cloud will rest upon the title to plaintiff's property, gives the Court jurisdiction.

Wallace vs. Hines, 253 U. S., 66-67.
Shaffer vs. Carter, 252 U. S., 37, 46.
Greene vs. L. & I. R. R., 244 U. S., 499, 506.
Union Pac. vs. Colorado, 247 U. S., 282, 286.

Construction of Tax Statutes.

"The general rule in reference to statutes imposing taxes is that they are to be strictly construed against the Government, and in case of any doubt as to their meaning they are to be given a liberal construction in favor of those subjected to taxation."

42 Broadway vs. Anderson, 209 Fed., 991-3.
U. S. vs. Wigglesworth, 2 Story 369.
Twine Co. vs. Worthington, 141 U. S., 468, 474.
Southern Ry. vs. North Carolina, 97 Fed., 513-18.

Ad Valorem Assessment.

1. The assessment does not follow the method prescribed by the statutes of North Carolina and the tax assessing authorities proceeded upon an erroneous taxing principle which disregarded rights secured under the State and Federal Constitution and the assessment is, therefore, illegal.

L. & N. vs. Greene, 244 U. S., 522, at p. 536.
Davis vs. Wallace, Decided U. S. Sup. Ct., Jan. 9, 1922.

The Tax Commission and the Revenue Commissioner failed to follow the tax assessing statutes of North Carolina in the following particulars:

(a) Section 64 of the Machinery Act provides that tangible and intangible property be assessed separately. This was not done.

(b) Section 64 of the Machinery Act provides that the value shall be determined by use of actual cost of replacing the property. This was not done.

(c) Section 64 of the Machinery Act provides that the value of the franchise shall be determined by due consideration of the gross earnings as compared with the operating expenses and particularly by consideration of the value placed upon the whole property by the public as evidenced by the market value of all capital stock, certificates of indebtedness, etc. The assessing officers declined

to consider the market value of the capital stock, etc.

(d) Section 64 of the Machinery Act requires that the aggregate value of the physical property and of the franchise, determined as above stated, shall be the true value of the property for ad valorem taxation. Instead of arriving at true value in the method prescribed, the Tax Commission arrived at a value by capitalizing at 6 per cent the net return from State and interstate commerce in North Carolina. This is contrary to the statute.

(e) Section 65 of the Machinery Act provides that the Commission shall ascertain the total value of a railroad operating in several States and divide that value in the proportion that the length of such main line in North Carolina bears to the total length. This was not done.

2. The assessment of $96,306,357.00 is in excess of the true value in money of said property for tax purposes as the same is defined under the North Carolina Constitution and laws and violates the Uniformity Clause of the North Carolina Constitution and the Due Process of Law Clause of the United States Constitution.

(a) If net earnings were to be used as one element only of value, the net of this railroad operating in several States which should have been capitalized was the average net for years 1915-19

of $21,889,648.00, which sum, capitalized at 7 per cent and divided on a gross earnings basis, showed a value for North Carolina of $68,170,613.00. Capitalized at 6 per cent, showed a value of $79,532,-387.00. The net for the entire company for the five years 1916-1920 was $21,274,027.00. These earnings capitalized at 6 per cent divided on a mileage basis give to North Carolina a value of $71,267,994.00. Capitalized on a 7 per cent rate, $61,086,851.00. Capitalized on an 8 per cent basis, gives to North Carolina $53,460,995.00.

(b) The reproduction cost data should have been used. That data showed a value approximating sixty million dollars.

(c) The value arrived at on a road mileage proportion of the fair average market value of all Southern Railway securities for a series of years allocated to North Carolina a value of $59,881,-739.00.

(d) Capitalized at 6 per cent, the standard return allowed plaintiff under the Federal Control Act of Congress and divided on a mileage basis gives a value in North Carolina of $48,746,707.00.

(e) The tentative value of the Interstate Commerce Commission of plaintiff's property in North Carolina, with the estimated value of the land, gives to North Carolina a total of $59,904,438.00.

3. Rate at which net should be capitalized.

The rate at which the net should be capitalized,

if that method of determining value be adopted, is not fixed. It depends upon time, circumstances, and locality. It should be such rate as is accepted and usually realized upon investments in business in that locaity. Under the proof in this case the rate of capitalization should have been 8 per cent.

Lincoln Gas Co. vs. Lincoln, 250 U. S., 256, at 267.
Chicago, etc., Co. vs. State Board of Equalization, 114 Fed., 557, at 561.
San Diego Water Co. vs. City of San Diego, 118 Cal., 556.
Consolidated Gas Case, 157 Fed., 849, 870.
Consolidated Gas Case, 212 U. S. 19, 48.
Pioneer T. & T. Co. vs. Westenhaver, 29 Okla., 118 Pac. 354.

4. If excessive earnings are capitalized, it is an importation of value, contrary to law, to the same extent as if a total value is arrived at by stock and bond method and divided on a mileage basis, without deducting a large amount of personal property outside of the State or especially valuable terminals, etc.

Fargo vs. Hart, 193 U. S., 490.
Union Transit Co. vs. Kentucky, 199 U. S., 194.

Illegality of Assessment Due to Non-uniformity and Discrimination.

The County Boards of Review of thirty-two counties through which plaintiff operates made

certain horizontal reductions in the assessed value in said counties as a whole of real property. The Commissioner of Revenue declined to give to plaintiff similar horizontal reductions in plaintiff's right of way, lands, and structures thereon, situated in said counties. This declination on the part of the Commissioner of Revenue violates Section 3 of Article 5 of the Constitution of North Carolina and violates the Fourteenth Amendment to the Constitution of the United States. It is an illegal discrimination.

The Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the Federal Constitution have been violated, in that, while plaintiff's property is alleged by the State to be assessed at its true value for tax purposes, the property of other taxpayers generally in the State is habitually, customarily, and systematically assessed for tax purposes at less than true value.

The affidavits of plaintiff in this case compare the deed value of all deeds recorded for the six months, January 1st to June 30th, 1921, (more than six thousand in number) with the 1921 assessment of the same property, which shows that the assessed value in the State is 67 per cent of the actual or deed value. The State averred in its answer that its assessment of plaintiff's property was the true, actual value thereof.

Greene vs. L. & I. R. R. Co., 244 U. S., 499, 514-16.

Taylor vs. L. & N. R. R. Co., 88 Fed., 350, 364-71.

C. M. & St. P. vs. Kendall, 278 F. R., 298.

The discrimination by an undervaluation of other property and an overvaluation of plaintiff's property has been intentional and systematic and violates the Constitution of the United States and of North Carolina.

Sundaylake Iron Co. vs. Wakefield, 247 U. S., 350-2.

Raymond vs. Chicago, etc., 207 U. S., 20, 35-6.

Discrimination Among Members of the Same Class.

Different methods were employed in valuation of different members of the railroad class which results in unlawful discrimination to plaintiff's harm. The reproduction cost of certain railroads was used while plaintiff's value was ascertained by capitalization of net earnings.

Raymond vs. Chicago, etc., Co., 207 U. S., 20, 36.

Franchise Tax.

Neither State Courts nor Legislatures can by giving a tax a particular name make of it a tax

different from that which its real nature and effect compels.

Choctaw vs. Harrison, 235 U. S., 292.
Galveston vs. Texas, 210 U. S., 217, 227.

The Courts regard substance rather than form and the controlling test is in the operation and effect of the statute as applied.

St. L. & S. W. vs. Arkansas, 235 U. S., 350, 362.
Crew Levick Co. vs. Pennsylvania, 245 U. S., 292.

1. The so-called franchise tax is not a franchise tax, but is in fact an ad valorem or property tax. Since it is an ad valorem tax, it is void because not levied equally upon all property holders in the State, and is, therefore, contrary to Section 3 of Article 5 of the Constitution of North Carolina, and by reason of the enforcement thereof, plaintiff is deprived of the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States.

2. The so-called franchise tax is a property tax and void.

A tax such as this, based on the value of the property and not upon the amount of business transacted, is a property tax and not a franchise or privilege tax.

Worth vs. Railroad, 89 N. C., 301.

Provident Institution vs. Massachusetts, 6 Wall., 611, at 630, 631.

State vs. Stonewall Insurance Co., 39 Ala. 335.

Tremont vs. Lowell, 59 N. E., 1007.

C. & E. I. vs. State, 51 N. E., 924.

People vs. Knight, 174 N. Y., 475, 67 N. E., 65.

This tax is void because it is assessed on the entire value for ad valorem tax purposes of all of plaintiff's property in the State. Plaintiff has non-carrier property and the tax based upon a value any part of which consists of property not used in the business is not a valid franchise tax.

3. The amount of the franchise tax is double what it should be under Section 82(3½) of the North Carolina Revenue Law, which provides that where the proportion of the capital stock of a foreign corporation (Southern Railway is a foreign corporation) is less than half of the assessed value for taxation of all property of such company in the State, the franchise tax is to be paid upon half of the assessed value. The plaintiff's capital stock apportioned to North Carolina is less than half of the assessed value.

4. If the tax levied under Section 82(6½) is a franchise tax, it is invalid in that it is a burden upon interstate commerce.

The franchise tax of North Carolina is based upon the total ad valorem value. That value is

arrived at under the North Carolina statutes by valuing property employed in both intrastate and interstate commerce, which is permissible, and by including in the value of such property the value of its use derived from being used in both intrastate and interstate commerce, which is permissible in arriving at the value of physical property in North Carolina for ad valorem tax purposes, but since the State can not tax interstate commerce, or levy a tax for the doing of interstate commerce, it can not accomplish that indirectly by basing a franchise tax upon a total value of property, which value is in part derived from interstate commerce. In this case the value was fixed by the tax authorities by capitalizing net earnings derived from state and interstate commerce and a franchise tax based thereon violates the commerce clause of the Federal Constitution.

Atlantic, etc., Telephone Co. vs. Philadelphia, 190 U. S., 160, 162, 163.

Wells Fargo vs. Nevada, 248 U. S., 165, 167.

Adams Express Co. vs. Ohio, 165 U. S., 194, 220.

Harrisburg vs. Texas, 210 U. S., 217, 225, 249.

Kansas City Ry. vs. Kansas, 240 U. S., 227, 231.

Postal Telegraph & Cable Co. vs. Adams, 155 U. S., 688, 695.

Western Union vs. Kansas, 216 U. S., 1, 26.

In the case of *St. L. & S. W. Ry. vs. Arkansas,* 235 U. S., 350, the Court, at p. 363, said:

> "The tax, as will be observed, is not in anywise based upon the receipts of the railway company from interstate commerce, either taken alone or in connection with receipts from its intrastate business. Since, therefore, the amount of the imposition is not made to fluctuate with the volume or the value of the business done, we are relieved from those difficulties that arise where said taxes are based upon the earnings of interstate carriers."

5. The franchise tax law is invalid in that it imposed a condition upon the right of this foreign corporation engaged in interstate commerce to transact interstate commerce. The North Carolina franchise law levies a franchise tax upon every railroad company doing business in the State.

Under Section 82(17) the punishment for failure to pay is that "the Secretary of State shall thereupon cancel the certificate of authority of any such foreign corporation to do business in the state." Again, in Section 82(20), the Attorney General is directed to secure an injunction "to restrain such public utility or corporation from the transaction of *any* business in this State until the payment of such taxes." The foregoing language of the Act and the enforcement Sections make it clear that the tax is levied for the privilege of doing any business, which includes doing of interstate business, and that is not constitutional.

The payment of the tax is made a condition precedent to doing any business.

Ludwig vs. Western Union, 216 U. S., 146, at 156.

I. C. vs. Railroad Commission, 229 Fed., 248, at 255.

Underwood Typewriter Co. vs. Chamberlain, 254 U. S., 113, at 119.

St. L. & S. W. vs. Arkansas, 235 U. S., 350, at 368.

ARGUMENT.

Jurisdiction.

The bill states the amount involved is in excess of three thousand dollars; it further shows that the tax is assessed in violation of the Fourteenth Amendment to the Constitution and in violation of the Commerce Clause of the Constitution; it further shows that unless the collection of the tax is enjoined a multiplicity of suits will result; it further shows that there is no adequate remedy at law and that unless the collection of the tax is restrained a cloud will rest upon the title of all plaintiff's property. These allegations are made in good faith and, under the decisions, give the Court jurisdiction.

The case of *Wallace vs. Hines* was an appeal from the order of the three judges restraining the

defendants from taking steps to enforce taxes imposed by an Act of North Dakota. The Court said:

> "The defendants are the State Tax Commissioner, the State Treasurer, the State Auditor, the Attorney General and the Secretary of State for North Dakota. As the tax is made a first lien upon all the property of the plaintiff railroads in the State and thus puts a cloud upon their title, and as delay in payment is visited with considerable penalties, there is jurisdiction in equity unless there is an adequate remedy at law against the State, to which the tax is to be paid."
>
> *Wallace vs. Hines,* 253 U. S., 66, 67.

The case of *Shaffer vs. Carter* was a suit in equity to restrain the enforcement of a tax assessed under the Income Tax Law of Oklahoma. The Court said:

> "As ground for resorting to equity, the bill alleges that plaintiff is the owner of various oil and gas mining leases covering lands in Creek County, Oklahoma, and that the lien assessed thereon by virtue of the levy and tax warrant creates a cloud upon his title. This entitles him to bring suit in equity (citing many cases), unless the contention that he has a plain, adequate and complete remedy at law be well founded."

Shaffer vs. Carter, 252 U. S., 37, 46.

The case of *Greene vs. L. & I. R. R.,* was one in which a bill was filed against the State Board of Valuation of Kentucky and against the Attorney General to restrain the collection of franchise taxes. There was no diversity of citizenship. The suit arose under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. It was alleged that the illegal valuation constituted a cloud upon plaintiff's property. There was a demurrer filed to the effect that no Federal question was involved and that it was a suit against the State. The Court said:

> "(1) It is convenient to state at this point what, indeed, is not controverted, that, if the suits be otherwise maintainable, the last-mentioned averments of the bills show sufficient special grounds for invoking the equity jurisdiction, under the rule established by repeated decisions of this Court. Dows vs. City of Chicago, 11 Wall. 108, 110, 112; Hannewinkle v. Georgetown, 15 Wall. 547; Union Pacific Railway vs. Cheyenne, 113 U. S., 516, 525, 526; Ohio Tax Cases, 232 U. S. 576, 587."

Greene vs. L. & I. R. R., 244 U. S., 499, 506.

> "Equity has jurisdiction to enjoin the collection of illegally discriminatory taxes, where the existence of an adequate and complete remedy at law is doubtful.
>
> "Where the legal remedy by paying the taxes and suing to recover back necessitates

separate actions against several school districts and towns, it will not displace the equitable remedy by injunction in one suit."

Union Pac. vs. Colorado, 247 U. S., 282, 286.

The contention that plaintiff may pay and sue to recover is not an adequate remedy at law.

King vs. Northern Pacific, 196 Fed., 323.

Where a person is entitled to litigate in a Federal Court, it is not an adequate remedy at law to be invited into a State Court by his antagonist to adjudicate his rights.

U. S. Life Ins. Co. vs. Cable, 98 Fed., 761.

A State cannot tie up a citizen of another State, for property rights within its territory invaded by unauthorized acts of its own officers, to suits for redress in its own courts.

Smyth vs. Ames, 169 U. S., 466.

Section 7979 of the Consolidated Statutes of North Carolina permits an injunction if a tax be illegal or invalid or be levied or assessed for an illegal or unauthorized purpose.

The Supreme Court of North Carolina holds that the effect of the above section is to give an additional remedy to test the validity of a tax, leaving it to the discretion of the taxpayer to pay the tax and sue to recover it back, or to proceed by injunction.

Range Co. vs. Carver, 18 N. C., 328.
Purnell vs. Page, 133 N. C., 125.

The defendants in their answer (52) set out the following:

> "* * * that, as hereinbefore stated, the said Commissioner of Revenue did decline to reduce said values, and if the plaintiff felt itself aggrieved by the action of the Commissioner in this particular, then it was competent for the plaintiff by application to the Court for a writ of certiorari to have had the action of the Commissioner of Revenue in this manner reviewed by the courts of the State, and its grievances, if any, redressed."

This is the only averment which suggests that plaintiff had an adequate remedy at law, and that remedy is averred to be by means of a writ of certiorari to have the action of the Commissioner of Revenue reviewed. Certiorari is not an adequate remedy at law so as to defeat the jurisdiction of the Federal Court in equity, as held in *Borden's Condensed Milk Co. vs. Baker,* 177 Fed. (C. C. A. 4th Circuit) 906. The decision of the Court on this point is set forth in the third headnote as follows:

> "Since a writ of certiorari will not issue out of a Federal Court, except in aid of such court's jurisdiction, and is not available to review and annul an alleged invalid municipal ordinance, the fact that under the state practice such a writ had been available for that purpose since 1789 did not afford complainant an adequate remedy at law, precluding it from maintaining a suit to restrain the enforcement of such ordinance in the Federal Court, though it had previously instituted certiorari proceedings in the State Court to the same end."

Construction of Tax Statutes.

"The general rule in reference to statutes imposing taxes is that they are to be strictly construed against the Government, and in case of any doubt as to their meaning they are to be given a liberal construction in favor of those subjected to taxation."

42 Broadway vs. Anderson, 209 Fed. 991-3.

Judge Simonton, in *Southern Ry. vs. North Carolina,* 97 Federal Reporter, stated the rule as follows:

"It must be borne in mind that the legislation now under discussion is not remedial legislation. In all such cases courts labor to arrive at the beneficent intent of the legislature and seek to secure it full effect. Com. vs. Kimball, 24 Pick. 370, and cases collected in 23 Am. & Eng. Enc. Law, 309, 362, and 24 Am. & Eng. Enc. Law, 358. We are construing statutes imposing taxes and burdens on the taxpayer. In all such the rule is changed. 'The highest power that a sovereign—the law-making power—can confer is the power to tax; and every act conferring that power must express it plainly, and the act so expressing it must be strictly construed.' Suth. St. Const. 459 et seq. In every case of doubt, such a statute is construed against the government. U. S. vs. Wigglesworth, 2 Story, 369, Fed. Cas. No. 16690.

"Says Lord Chancellor Cairns in Partington vs. Attorney General, L. R. 4 H. L. 100, 122:

"'As I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an "equitable construction," certainly such a construction is not admissible in a taxing statute when you can simply adhere to the words of the statute.'

"See, also, U. S. vs. Wigglesworth, 2 Story, 369, Fed. Cas. No. 16690; Twine Co. vs. Worthington, 141 U. S. 474, 12 Sup. Ct. 55; Rice vs. U. S., 4 C. C. A. 104, 53 Fed. 910."

Southern Ry. vs. North Carolina, 97 Fed., 513-18.

Ad Valorem Assessment.

The following are the grounds upon which the ad valorem assessment is claimed to be illegal:

(1) The Tax Commission, in making the assessment, and the Commissioner of Revenue, in refusing to change it, failed and refused to follow the method prescribe by the statutes of North Carolina for the assessment of railroads, proceeded upon an erroneous taxing

principle, and followed an arbitrary illegal plan, and the assessment is, therefore, invalid.

Section 64 of the Machinery Act, as set forth in the Appendix hereto, reads in part as follows:

"SEC. 64. *Tangible and intangible property assessed separately.*

"(a) At such dates as real estate is required to be assessed for taxation, the said commission shall first determine the value of the tangible property of each division or branch of such railroad of rolling stock and all other physical or tangible property. This value *shall* be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property.

"(b) They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property.

"(c) The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the

property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof."

Section 65 of the Machinery Act reads in part as follows:

"SEC. 65. *Railroads.*

"When any railroad has part of its road in this State and part thereof in any other State, the said commission shall ascertain the value of railroad track, rolling stock, and all other property liable to assessment by the State Tax Commission of such company as provided in the next preceding section, and divide it in the proportion to the length such main line of road in this State bears to the whole length of such main line of road, and determine the value in this State accordingly: *Provided,* the commission shall, in valuing the fixed property in this State, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State than the average value for the entire system."

In *L. & N. R. R. vs. Greene,* 244 U. S., 522, this Court considered an appeal of a suit by the Railroad Company against the Board of Valuation and Assessment of Kentucky seeking to restrain the taking of any steps toward enforcing taxes upon

the basis of a certain assessment which was alleged to be unlawful and excessive and that the Board of Valuation proceeded upon erroneous principles. This Court, at p. 536, said:

> "The findings of an official body such as the Board of Valuation and Assessment, made—as was the case here—after a hearing and upon notice to the taxpayer, are quasi-judicial in their character, and are not to be set aside or disregarded by the courts unless it is made to appear that the body proceeded upon an erroneous principle or adopted an improper mode of estimating the value of the franchise, or unless fraud appears. *Pittsburg, etc., Ry. Co. vs. Backus,* 154 U. S., 421, 435-436; *Chicago, Burlington & Quincy Ry. Co. vs. Babcock,* 204 U. S., 585, 596. In this case there is no showing of fraud, the contention being that the Board departed from the mode prescribed by the statute. If they did this, or if they proceeded in disregard of rights secured to the taxpayer by the State or Federal Constitution, of course they proceeded upon an erroneous principle."

This Court, in the case of *Davis, Director General, vs. Wallace,* decided January 9, 1922, had under review the question of enjoining the collection of a special excise tax levied by the State of North Dakota. That part of the North Dakota statute pertinent to the point now made against the North Carolina statute was a proviso that in the case of a railroad having lines that enter into,

extend out of, or cross the State, the property within the State should be held to mean that proportion of the entire property of such corporation engaged in such business which its mileage within the State bears to its entire mileage within and without the State. Attention is directed to the similarity of the Section just referred to and Sec. 65 of the Machinery Act of North Carolina, *supra*.

This Court said:

> "The first of the objections made to the tax is that it was assessed on a basis which the statute does not authorize or sanction. Of course, if this be so the tax must fall, and the other objections need not be considered. The statute does not prescribe a single or unvarying basis whereon the tax shall be assessed, but designates several bases and defines the particular situation in which each shall be applied. Where the business of the corporation is wholly within the State the tax is to be computed according to the "capital actually invested" in the business. Where the business is partly within and partly without the State the computation is to be based on a proportion of the company's 'entire stock and bond issues,' which is to be taken as representing the 'investment within the State.' But the proportion is to be determined by standards which vary materially. In one situation it is to conform to the ratio of the company's business within the State to its total business, and in another to the ratio of the company's property employed in its business within the State to its entire

property employed in its business wherever conducted. In the instance of railroad companies and other public utility corporations having lines partly within and partly without the State the statute specially provides that it shall conform to the ratio of the company's mileage within the State to its entire mileage.

* * * * * * * * * * *

"This provision shows that the legislature intended by it to put the corporations which it describes in a separate class for the purposes of the tax, to require as to them that the tax be computed and assessed on the special basis there prescribed, and to exempt them from the bases applicable to other corporations. That intention hardly could have been more clearly expressed."

The Court held:

"From what has been said it follows that to sustain the tax in question we should have to hold that the taxing officers, on finding that it could not constitutionally be assessed on the basis specially prescribed in the statute, were at liberty to assess it on another and different basis which the statute shows was not to be applied to corporations of the class to which these railroad companies belong. Of course we cannot so hold."

Whatever latitude may have been allowed the taxing board, we state this to be a fundamental in order that the assessment of a railroad which runs from North Carolina into another State may be constitutionally assessed, namely, that the

total value should have been arrived at and the North Carolina proportion thereof be ascertained on the basis of the North Carolina mileage to the total mileage. This was not done, as we will show. One of the objections made to the capitalization of the North Carolina earnings, State and interstate, is based on the fact that the Tax Commission failed and refused to arrive at a value by capitalizing the entire net, within and without the State, and divide it on a mileage basis. If the statute had been followed, this objection would not have arisen. The reason for having such a provision in the law is in order to prevent the very condition with which we are now confronted because the taxing authorities assumed an authority not given them under the law.

We contend that the Board followed an erroneous principle. Necessarily if the assessing officer departed from the method prescribed in the statute he proceeded upon an erroneous principle.

The record shows that plaintiff furnished the Commission as complete a statement of cost of reproduction as possible. Plaintiff's testimony on this is:

> "That he, as representing Southern Railway Company, furnished to the Commission, in response to its demand, a mass of detailed information as to the cost of reproduction of the properties of his Company in the State of North Carolina; said statements were correct and accurate as to the rolling stock and

equipment. It was stated that as to the physical value of the property, other than rolling stock, that was as complete as the limited time given Southern Railway within which to prepare the same permitted. He is able to set out at this time that the values presented in said accounts approximated the values now given out by the Bureau of Valuation of the Interstate Commerce Commission in their tentative report, as set forth in the bill filed in this case; that upon filing the same the Tax Commission declined to consider it, stating that it was worthless for the purpose furnished." (116)

The three members of the Tax Commission which fixed the assessment said on this point:

"The Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk-Southern Railroad Company, in response to demands made upon them for specific and detailed information as to the cost of reproduction of the properties in this State of each of these companies, did file with the State Tax Commission certain sets of figures, now on file with the Commissioner of Revenue, but did not pretend that such figures even approximated the cost of reproduction of the properties owned by these companies, or either of them, in this State, in the year 1919, but, on the other hand, insisted that it would not be possible for them to furnish this information at any reasonable cost or at any cost within a period of several years. The State Tax Commission, therefore, did not have

the benefit of this specific detailed information with respect to the value of the particular properties in this State of these several railroad companies which it did have with respect to, and used in, the valuation of properties of industrial enterprises within the State, and of necessity had to form its valuation of the properties of these companies without having this information and by making the best use that it could of other information furnished by these companies on file with and in the records of the North Carolina Corporation Commission." (97)

According to their own statement, they disregarded the data as to reproduction cost of the property.

The plaintiff proved the par value of the stocks and bonds and other securities as shown by the following testimony:

"Affiant also proved the total par value of the outstanding stocks and bonds of Southern Railway Company and offered to agree with said Tax Commission upon the fair market value of said stocks and bonds, if the Commission should desire to make the assessment under that plan." (66)

The Tax Commission testified as to this evidence of value:

"A satisfactory estimate of value could not be made based upon the market value of the stocks and bonds of these companies on

the first day of May, 1919, for the reason that the limited market and the limited number of shares and bonds sold on the market did not furnish, in our judgment, a fair index of the actual value of these properties as a whole, and more particularly did not furnish an index of the actual value of the properties of these companies located within the State of North Carolina for the reasons hereinbefore stated." (98, 99)

Instead of using the elements as above set forth, as directed by the statute, the Tax Commission testified as to the manner it employed in arriving at the value of plaintiff's property, as follows:

"As to the properties of the Southern Railway Company in the State of North Carolina, a valuation of $111,308,325 was made, which was in fact the proportion of the investment account of the Southern Railway Company which the gross earnings of that company within the State of North Carolina bore to the total gross earnings of the Southern Railway Company for the entire system. Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960,416, which was in fact the amount which the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis or theory of six per cent, would have produced." (99)

Plaintiff's tax officer testified that he insisted orally and in brief before the State Tax Commission, and again before the Commissioner of Revenue, that the Southern Railway Company's investment account was not a true index of the value of its property in North Carolina for tax purposes and that he was the only person who submitted any facts on behalf of plaintiff before the Tax Commission (116).

The uncontradicted evidence is that the investment account included in the total material and supplies which were on hand at the time the investment account was rendered in July, 1920, but were not on hand in May, 1921, and that the investment account was not by any one allocated to the State of North Carolina (77).

As will have been noted from Section 64 of the Machinery Act, above set forth, the tangible and intangible property is by the law of North Carolina directed to be assessed separately. This was not done. As will have been noted, Section 65 provides that where a railroad has part of its road in North Carolina and part in other States, the Commission *shall* ascertain the value of railroad track, rolling stock, and all other property liable to assessment by the State Tax Commission, as provided in Section 64, "and divided in the proportion to the length such main line of road in this State bears to the whole length of such main line of road and determine the value in this State accordingly," provided the Commission may consider the difference in value of the part of road in

North Carolina as compared to the other parts of the road. This was not done.

It is indisputable, therefore, that the assessing officers departed from the method prescribed by law for the revaluation of railroad property. It used a single element of value in arriving at the assessment, namely, capitalization of earnings, and it disregarded altogether, for one reason or another, the other elements laid down in the statute. There was no authority in the law for so doing. This is admitted in the answer (43). The law said that the tangible value "shall be determined by a due consideration of the actual cost of replacing the property," etc. This was not done. The law says in arriving at the franchise value, that value "shall be determined by due consideration of the gross earnings as compared to the operating expenses, and *particularly* by consideration of the value placed on the whole property by the public (the value of the physical property being deducted) as evidenced by the market value of all capital stock," etc. This was not done. The State recognizes the predicament in which it is and says that it gave consideration to the other elements provided by the statute in addition to capitalization of earnings. This is not borne out by the testimony of the three individuals who fixed the assessment, and inasmuch as the assessment is the exact amount of the capitalized earnings and inasmuch as the other elements showed a value of many millions less, the plaintiff received no benefit from

the consideration, if any was given, and it was and is entitled to the benefit thereof.

(2) The assessment of $96,306,357.00 is in excess of the true value in money of said property for tax purposes as the same is defined under the North Carolina Consttution and laws and violates the Uniformity Clause of the North Carolina Constitution and the Due Process of Law Clause of the United States Constitution.

Section 3 of Article 5 of the Constitution provides that all real and personal property shall be taxed at its true value in money. If the assessment is in excess of true value it violates the North Carolina Constitution and to enforce it would deprive plaintiff of its property without due process of law, contrary to the Federal Constitution. The assessment complained of is $96,306,357.00, being the same as 1920 except for minor changes in local property lying off the right of way.

It was shown the Tax Commission in 1920 that the net earnings of the Southern Railway Company showed an average for the first five years 1915-1919 of $21,889,648.00, which sum capitalized at 7 per cent showed a valuation for the system of $312,709,260.00 and a valuation for North Carolina of $68,170,618.00, under the gross earnings ratio of 21.80 per cent (66), or, capitalized at 6 per cent and divided on the gross earnings basis, would yield a value of $79,532,387.00. It was

shown the Tax Commission that the annual net earnings for North Carolina were $6,117,625.00, but it was shown in connection therewith that this was not the true net, because the operating expenses for North Carolina were understated (66). The facts showing the understatement of expenses in North Carolina are set forth in the affidavit of J. B. Duke (79, 80, 81) and in the affidavit of A. H. Plant (75, 76). The foregoing facts were also shown the Revenue Commissioner in 1921 and he was shown that the average net for the Southern Railway Company for the five years 1916-1920 was $21,274,027.00, and that these earnings capitalized at 6 per cent and divided to North Carolina on a road mileage basis would give to North Carolina a value of $71,267,-994.00. Capitalization on a 7 per cent rate and divided on a road mileage basis would give to North Carolina $61,086,851.00. Capitalization on an 8 per cent rate and divided to North Carolina on a road mileage basis would give to North Carolina $53,460,995.00 (12).

The reproduction cost data, as complete as the time allowed would permit, was furnished the Tax Commission. That data approximated the tentative values later given out by the Bureau of Valuation of the Interstate Commerce Commission (116).

It was shown the Court that the Bureau of Valuation of the Interstate Commerce Commission had found a tentative value of the cost of reproduction of plaintiff's properties in North Carolina. This

reproduction cost, with a mileage proportion of the rolling stock and estimated value of the land, gave a total value of $59,904,438.00 (13, 14).

It was shown to the Tax Commission and to the Commissioner of Revenue that taking the fair average market price of all Southern Railway securities for a series of years amounted to $287,049,221.00. The road mileage proportion of this figure, as required by Section 65, would allocate to the State of North Carolina the value of $59,881,739.00 (13, 84).

It was shown to the Commissioner of Revenue that capitalizing the standard return allowed plaintiff under the Federal Control Act of Congress at 6 per cent and dividing on the mileage basis would give a value to plaintiff's property in North Carolina of $48,746,707.00 (15).

The foregoing elements of value other than the standard return are prescribed by the law to be used and each of them, other than the standard return, is upheld in decisions of this Court as a recognized test of ascertainment of value of a railroad.

The law requires that the value of the franchise be arrived at by due consideration of capitalization of earnings and by particular consideration of the value placed on the property by the public, evidenced by market value of its securities; from such value the value of the tangible property is to be deducted, and the remainder is the franchise value. Applying that rule, we find that the total value is somewhere between the $71,000,000.00

capitalization of earnings (or $53,000,000.00 if eight per cent is the rate used) and $45,000,000.00, the value by the stock and bond method. The mean between the two values would be $58,500,000.00, and since the replacement value is in excess thereof, there was no intangible or franchise value as of May 1, 1921, which accords with the operating results of the first six months of 1921, and therefore the total ad valorem value as of May 1, 1921, was $60,000,000.00.

The plaintiff prayed (20) that the Commissioner of Revenue state in his answer the method whereby he reached the final assessment. The Commissioner of Revenue, responding in his answer to the interrogatory, denies that the State Tax Commission used the capitalization of plaintiff's net income for North Carolina exclusively in arriving at the said assessment. He says further that the Tax Commission followed Sections 64 and 65 of the Machinery Act. He further says that by an application of the method set forth in Sections 64 and 65, other than the income method and the stock and bond method, the Tax Commission arrived at a figure in excess of one hundred million dollars, and that consideration of the capitalization of net income and consideration of the market value of the stocks and bonds reduced the tax to ninety-six million dollars.

We appreciate that we can not inquire into the operation of the minds of the Tax Board, but we have the right to be advised sufficiently of the

method pursued to intelligently determine if the law has been followed.

As said in the case of *Long Dock Co. vs. State Board of Assessors,* from the highest court of New Jersey, 92 Atlantic 439, at pages 441-2:

> "The mental process by which the board makes its inferences and reaches its conclusions is no more open to inquiry than the processes by which a jury reaches its verdict (Chicago, B. & Q. Ry. Co. vs. Babcock, 204 U. S. 585, 27 Sup. Ct. 326, 51 L. Ed. 636), but the evidential facts on which the finding and judgment of the board rests are as open to inquiry as the facts proved before a jury, and none the less open in the one case than in the other, because those facts are within the knowledge of members of the board alone or in the knowledge of jurymen alone."
>
> * * * * * * * * * * *
>
> "It is not consistent with the methods of judicial tribunals, nor of special tribunals seeking to do justice, to give the taxpayer no chance to know what the case made against him may be."

We can not see what objection the tax authorities would have to advising the taxpayer the method used and the results in dollars and cents, so that it may be fairly determined whether the assessment is the value of the property for tax purposes. Inasmuch as the method alleged by the Railway to have been used produces the exact figure at which the property was assessed, we think that, notwithstanding the categorical de-

nial, the record before the Court and the admission of the taxing board (99 and 72) show that the method which the plaintiff claims was used is the one which was in fact used.

A number of methods for determining the value of a railroad have at one time or another been approved by the Courts. The determination of the value of a railroad is not easy. The method pursued in any case is only a means to the end of arriving at true value, and it must follow that no matter how perfect the plan may be as a plan, still if the result of following it is an over-assessment in a particular case, the plan should not have been followed in that case.

In this case the result is that the assessment is in excess of its true value.

Rate at Which Net Should Be Capitalized

(3) The State capitalized the net earnings at 6 per cent which was not the proper rate at which to capitalize, and the result was a value in excess of the true value.

To arrive at a correct result when using the plan of capitalization of net earnings, the correctness of the rate at which the net is capitalized is as important as using a correct net figure to capitalize. It is true that in the past in many rate cases and in a few tax cases capitalization at six per cent has been upheld. Why six per cent any

more than four per cent? Was it not because at that time a yield of six per cent was thought to be all that was requisite to induce investors to invest their money in such enterprises? If not that, it may have been because investments in business generally in that community yielded no more than six per cent. If these be the reasons and if the premise upon which they are based is contrary to the evidence in this case, then we submit the rate of six per cent is wrong and the correct rate is eight per cent. The unforeseen contingencies, the periodical disasters attendant upon railroad property such as storms and floods, the hazards of the business, the lean years are all to be considered in granting to railway invested capital a higher rate of return than the rate fixed by law for a first mortgage lien. What is a reasonable return in any event is governed by two prime considerations: Safety or regularity, and what money invested in other property will yield.

> "An important circumstance will always be the rate of interest at which money can be borrowed for investment in such a business; and, where the business appears to be honestly and prudently conducted, the rate which the company would be compelled to pay for borrowed money will furnish a safe, though not always conclusive, criterion of the rate of profit which will be deemed reasonable."

San Diego Water Co. vs. City of San Diego,
118 Cal. 556, 50 Pac. 633.

District Judge Hough, in discussing the return and what a prudent business man would do, said:

> "He would expect, and have just and reasonable right to expect, a return of six per cent, not because that happens to be the interest rate by law established in the State of New York, but because it is the return ordinarily sought and obtained on investments of that degree of safety in the City of New York."

Con. Gas Case, 157 Fed. 849, 870.
Pioneer Tel. & Tel. Co. vs. Westenhaver, 29 Okla., 118 Pac. 354.

What is a reasonable return in any case upon the property invested is determined in a great measure by the character of the investment and the amount thereof, and the return other investments of similar character and amount in the same community yield and the prevailing rate of interest.

Justice Peckham, in the *Consolidated Gas Case,* 212 U. S. 19, 48, said:

> "There is no particular rate of compensation which must in all cases and in all parts of the country be regarded as sufficient for capital invested in business enterprises. Such compensation must depend greatly upon circumstances and locality; among other things, the amount of risk in the business is a most important factor, as well as the locality where the business is conducted and the rate expected and usually realized there upon in-

vestments of a somewhat similar nature with regard to the risk attending them. There may be other matters which in some cases might also be properly taken into account in determining the rate which an investor might properly expect or hope to receive and which he would be entitled to without legislative interference. The less risk, the less right to any unusual returns upon the investments. One who invests his money in a business of a somewhat hazardous character is very properly held to have the right to a larger return without legislative interference than can be obtained from an investment in Government bonds or other perfectly safe security."

In *Chicago, etc., Co. vs. State Board of Equalization,* 114 Fed. 557, at 561, the Court said:

"Several other elements in a fair calculation, based on net earnings, have raised questions to which we have given careful consideration. The first of these is upon what rate of the true net earnings the aggregate value of the property should be capitalized. We have fixed the rate at six per cent."

* * * * * * * * * * *

"* * * for no investor feels secure of a dividend at six per cent next year, simply because the company has earned it this. It is probably fair to say that net earnings, accruing through several years, at the rate of five per cent upon the preferred half of the securities, and of seven per cent upon the remaining half, would make both securities worth their par value; and this would be equivalent to six per cent upon the whole."

This Court said in the case of,
Lincoln Gas Co. vs. Lincoln, 250 U. S. 256, at 267:

> "We cannot approve the finding that no rate yielding as much as 6 per cent upon the invested capital could be regarded as confiscatory, in view of the undisputed evidence, accepted by the master, that 8 per cent was the lowest rate sought and generally obtained as a return upon capital invested in banking, merchandising, and other business in the vicinity; 7 per cent being the 'legal rate' of interest in Nebraska."

Plaintiff's lines run into and through many other States, and, as evidence of the correctness of capitalization at not less than eight per cent (8%), it is shown that the taxing boards of the following States, have, for 1921, in arriving at the assessment on the capitalization basis, used the following rates of interest:

Georgia	8%
Alabama	8%
Mississippi	8%
Louisiana	8%
Tennessee	10%
Kentucky	7%
Ohio	8½%
Indiana	8%

(4) The plan of valuation followed to arrive at the assessment complained of imports into the State of North Carolina values which are elsewhere. Such plan violates the Commerce Clause of the Constitution of the United States.

If you capitalize excessive earnings, it is an importation of value, which is contrary to law and the decided cases. A board can not adopt a valuation by stocks and bonds and then tax the appellants upon the proportion of the value so reached that their mileage within the State bore to the total mileage, without deducting a large amount of personal property owned outside of the State, or specially valuable terminals, etc.

Fargo vs. Hart, 193 U .S. 490.
Union Transit Co. vs. Ky., 199 U. S. 194.

Illegality of Ad Valorem Assessment Due to Non-Uniformity and Discrimination.

(5) The County Boards of Review of thirty-two counties through which plaintiff operates made certain horizontal reductions in the assessed value in said counties as a whole of real property. The Commissioner of Revenue declined to give to plaintiff similar horizontal reductions in plaintiff's right of way, lands, and structures thereon, situated in said counties. This declination on the part of the Commissioner of Revenue violates Section 3 of Article 5 of the Constitution of North Carolina and violates the Fourteenth Amendment to the Constitution of the United States. It is an illegal discrimination.

The Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the Federal Constitution have been violated, in

that, while plaintiff's property is alleged by the State to be assessed at its true value for tax purposes, the property of other taxpayers generally in the State is habitually, customarily, and systematically assessed for tax purposes at less than true value.

On December 31, 1920, the Tax Commission reported to the Governor the result of its work under the Revaluation Act of 1919 the following:

> "They (real estate values) were made with reference to actual value on May 1, 1919, and under instructions to use such values with reference to that date as were deemed to be stable. The peak of speculative values in lands was reached in the fall of 1919, after the tobacco and cotton markets for that season developed unprecedentedly high prices for these products, and continued into the first half of 1920. The United States Department of Agriculture makes an annual appraisal of the average value of farm lands in all States. Their estimate of 1919 average value for this State was $47.00 per acre; for 1920, $75.00 per acre. The revaluation average was $38.94, or $8.00 per acre less than the 1919 average. This demonstrates that the revaluation values did not approximate the peak of speculative values. We should be equally cautious to avoid the other extreme of basing values for the future upon a congestion that has temporarily almost destroyed the market for real property." (72, 73)

It appears from the foregoing report of the Board which made the revaluation that as to real

estate values the Board used stable values and not speculative values. We contend that, while using stable values for other taxpayers, the Board used in part speculative earnings as a measure of the value of railroads. The result up to this point is, according to the State, that the railroads were assessed at full value and other property holders at a stable value.

As pointed out before, both the State Tax Commission and the Commissioner of Revenue in assessing railroad property, or in passing on such assessment subsequently, knew that real estate in general had been assessed at less than full value. Notwithstanding such knowledge, railroad property was assessed at full value according to the admission of the State and in excess of full value as viewed by the Southern Railway Company.

In 1920, plaintiff paid its taxes to the State of North Carolina and to its subdivisions under protest, thus bringing to the attention of the taxing authorities the discrimination against plaintiff.

Not yet satisfied with the relative adjustment, acting under Section 28(a) of the Machinery Act of 1921 (15), which had been passed by the Legislature subsequent to the revaluation, the County Boards of Review of sixty-seven counties through which the railroads operate (thirty-two through which plaintiff operates), have reduced horizontally land values in their respective counties in percentages ranging from ten per cent to fifty per cent, as set out in Exhibit "B" to the bill (24) and in the answer (48). This was done under the

said Act upon the theory that the assessment of 1920 was by said percentages in excess of the fair value of the said property on May 1, 1921. Evidently the action of the County Boards was upon the assumption that the revaluation of lands generally in the State was on a speculative war time basis and, therefore, should be reduced horizontally to bring them to a stable value. The contrary is true. As shown by the above report, the assessment of other real property was in the first instance at a stable value and the horizontal reductions reduced the stable value much below normal. This is borne out by the testimony showing that the assessed value to deed value covering six thousand transactions was something less than 67 per cent. Plaintiff sought by petition to the Commissioner of Revenue to have him make similar reductions on its land. This the Commissioner of Revenue declined to do. As shown in the record (24, 48) the tax rates of said Counties have been increased per hundred dollars in amounts ranging from fifteen cents per hundred dollars to eighty-four cents per hundred dollars. The result is that while other taxpayers generally will, due to decrease in assessment and increase in rate, pay no more, if as much, tax as last year, plaintiff will, due to increase in rate, pay on the same assessment, it is estimated, an increased per annum tax of in excess of three hundred thousand dollars.

The State sought to justify this discrimination on two grounds:

(1) That real estate values had been increased

about three times the value of 1919, whereas railroad property was increased only double. We will let the State Tax Commission answer that excuse as follows: "The new assessment of railroads does not represent as great an increase as the average increase of other property, for the reason that they were assessed relatively higher than other property before," etc. (Report of Tax Commission to Governor, dated August 10, 1920, rec. 72.)

(2) Assuming that the value of all the property was assessed at true value in 1920, the State gives as its second reason in justification the fact of the reduction in value of farm lands, due to reduction in value of farm products while it avers (fails to prove) that the value of railroads was not diminished. Plaintiff does not deny the reduction in value of farm products, but it is shown without contradiction that the depression also worked to the reduction of the value of railroads, it being shown for the first six months in 1921 (the only period available at that time) the plaintiff lacked, after paying operating expenses, taxes, hire of equipment, and rents for joint facilities, more than four and a half million dollars of earning sufficient money to pay the interest on its bonded indebtedness (81).

We submit that the Commissioner of Revenue should have at least granted the Railway a similar reduction in its real estate values in the several counties or the average reduction in its total value.

The total real estate assessment in 1920 in the thirty-two counties through which the Southern Railway operates, which reduced their assessments for 1921, was $858,832,162.00. The total assessment in 1921 of same property was $622,927,384.00. The average per cent of reduction being 27.47 per cent. If you reduce the Railway's 1920 assessment of $96,605,694.00 by the average per cent of reduction, namely, 27.47 per cent, you will have as the 1921 assessment the sum of $70,068,110.00.

The affidavits of the plaintiff in these tax cases, which compare the deed value of all deeds recorded for the six months January to June 30, 1921 (more than six thousand in number), with the 1921 assessment of the same property show that the assessed value in the State is 67 per cent of the actual or deed value. This is borne out by the statement of the Tax Commission in its report to the Governor on December 31, 1920, as follows:

> "The United States Department of Agriculture makes an annual appraisal of the average value of farm lands in all states. Their estimate of 1919 average value for this State was $47.00 per acre; for 1920, $75.00 per acre. The revaluation average was $38.94, or $8.00 per acre less than the 1919 average. This demonstrates that the revaluation values did not approximate the peak of speculative values." (73)

The State averred in its answer:

> "It is averred that the assessment of $96,306,357.00 for 1921 is the true actual value thereof." (44)

We submit that it is shown that other property generally in the State is assessed at 67 per cent of its true value (114), whereas railroad property is admitted to be assessed at 100 per cent of its true value (44). It is clearly demonstrated that the horizontal reduction allowed on practically all other land in the State was a reduction from an assessed value that did not before being reduced approximate true value and that the reduction merely increased the discrimination already existing.

C. M. & St. P. vs. Kendall, 278 Fed., 298.

The law on this question has become settled. It is that intentional systematic undervaluation by State officials of certain classes of property, while other classes are assessed at full value or at a higher percentage of full value, is unlawful.

The fact that the two classes of property are assessed by different boards does not cure the discrimination or put the resulting non-uniformity beyond the redress of the Federal Equity Courts.

Greene vs. L. & I. R. R. Co., 244 U. S., 499, 514-16.

Taylor vs. L. & N. R. R. Co., 83 Fed. 350, 364-71.

In this case the Revenue Commissioner sat as a member of the Equalization Board which approved the horizontal reduction made in the coun-

ties and the same official declined to review or change or reduce the plaintiff's assessment.

Discrimination resulting in the deprivation of the equal protection of the law may be brought about either by the act of the legislature in the passage of the tax law, or by the acts of the officers to whom the execution of the law is entrusted. The purpose of the equal protection clause of the Fourteenth Amendment is "to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute, or by its improper execution through duly constituted agents."

Sunday Lake Iron Co. vs. Wakefield, 247 U. S. 350, at page 352.

Raymond vs. Chicago Traction Co., 207 U. S. 20, at pages 35 and 36.

In *Raymond vs. Chicago Traction Co., supra,* the court stated the rule to the effect that discrimination may result in either of the two ways, beginning on page 35, as follows:

> "The provisions of the Fourteenth Amendment are not confined to the action of the State through its legislature, or through the executive or judicial authority. Those provisions relate to and cover all the instrumentalities by which the State acts, and so it has been held that, whoever, by virtue of public position under a state government, deprives another of any right protected by that amendment against deprivation by the State,

violates the constitutional inhibition; and as he acts in the name of the State and for the State, and is clothed with the State's powers, his act is that of the State."

Plaintiff is concerned primarily with discrimination resulting from the acts of the officers or agents of the State, done in the execution of the tax laws. This discrimination has been intentional, systematic and habitual.

In *Greene vs. L. & I. R. R. Co., supra,* the Court quoting from an opinion by Circuit Judge Taft in *Taylor vs. L. & N. R. R. Co.,* 88 Fed. 350, said, on page 518:

"After pointing out the similarity of the case to *Cummings vs. National Bank, supra,* and declaring (p. 372)): 'An intentional undervaluation of a large class of property, when the law enjoins assessment at true value, is necessarily designed to operate unequally upon other classes of property to be assessed by other taxing tribunals, who, it may be presumed, will conform to the law,' the Court further said (p. 374): 'The various boards whose united action is by law intended to effect a uniform assessment on all classes of property are to be regarded as one tribunal, and the whole assessment on all classes of property is to be regarded as one judgment. If any board which is an essential part of the taxing system intentionally and, therefore, fraudulently, violates the law, by uniformly undervaluing certain classes of property, the assessment by other boards of other classes of property at the full value, though a literal compliance with the law,

makes the whole assessment, considered as one judgment, a fraud upon the fully-assessed property. And this is true, although the particular board assessing the complainant's property may have been wholly free from fault or fraud or intentional discrimination.' "

It is thus seen that even though the property of the Southern Railway Company is assessed at its true value, yet if the property of individuals was intentionally undervalued, the result of the whole, taken as one judgment, constitutes a fraud upon the fully assessed property of the railroad.

Discrimination Among Members of Same Class.

(6) In the assessment of railroad properties different methods of assessment were used in the valuation of different members of that class, resulting in illegal discrimination among members of the same class to plaintiff's harm.

In addition to requiring uniformity in taxation, the Constitution of North Carolina also requires that all real and personal property be taxed according to its true value in money. Even though the objects of taxation may be classified, under the uniformity provision, yet there can be no classification which results in real and personal property being taxed other than according to its true value in money. Assuming that property holders or owners may be classified into individ-

uals, corporations and railroads for the purpose of providing different methods of valuation and assessment, yet the methods for the different classes must all lead to the result that the real and personal property of all classes is valued and assessed according to its true value in money.

If property holders are classified for the purpose of providing different methods of arriving at the true value in money of the real and personal property of such classes, the rule of uniformity requires that all in the same class shall have its property valued by the same method. In other words, each railroad in a class is entitled to have its property valued and assessed by the same method used in valuing and assessing the property of other railroads in that class. To be more specific, the State Tax Commission of North Carolina, or the Commissioner of Revenue, as the case may be, could not use one method for arriving at the value of the property of the Southern Railway Company, another method for the Norfolk-Southern Railroad Company, and another for the Atlantic Coast Line, and so on, using for each railroad such method as would serve to give to the property of each railroad a higher value.

The record in this case shows that the assessment is based upon its reconstruction value, less depreciation, as found by the Bureau of Valuation of the Interstate Commerce Commission, while in the case of the Southern Railway Company, the assessment is based upon the capitalization at 6 per cent

of the net income of that company, allotted to North Carolina.

The evidence to sustain this charge is:

> "Affiant is so informed and believes it to be true that the records in the office of the North Carolina Commissioner of Revenue show that the Interstate Commerce Commission has found the reproduction cost, less depreciation, of the entire property in Virginia and North Carolina of Norfolk-Southern Railroad to be $26,023,366. That the total mileage of Norfolk-Southern Railroad is 900.543 of which 790.264 miles, or 87.754%, are in North Carolina. That the assessment fixed in 1921 for Norfolk-Southern Railroad by the Commissioner of Revenue is $22,840,932, or 87.754% of the Interstate Commerce Commission valuation of $25,028,366, before set out." (73)

Had the State Tax Commission, or the Commissioner of the Revenue, adopted this same method in arriving at the value of the property of the Southern Railway Company, such value would have been approximately $60,000,000.00, the amount on which that company has already paid the *ad valorem* taxes. Under the rule laid down in *Raymond vs. Chicago Traction Company,* 207 U. S. 20, this constitntes discrimination. In that case the State Board of Equalization had the duty of making an original assessment upon corporations of the class of the one complaining. From the decision of the Board in making such assessment no appeal is provided for, and consequently

such decision is conclusive, except as proceedings for relief may thereafter be had in the courts. This same Board acted as a Board of Review as to the assessments of local assessing bodies, and as to those assessments also, its decisions were equally conclusive. In pursuance of its authority to assess corporations, the Board assessed the Chicago Traction Company but used a method of assessing this corporation different from the method used in assessing other corporations in the same class. As a result, the Chicago Traction Company was assessed higher than other corporations in the same class. In affirming the judgment of the Circuit Court enjoining the collection of the balance of the tax levied against the Chicago Traction Company above that which had been paid under the direction of the Circuit Court, the Court said, beginning on page 36:

> "The case before us is one which the facts make exceptional. It is made entirely clear that the board of equalization did not equalize the assessments in the cases of these corporations, the effect of which was that they were levied upon a different principle or followed a different method from that adopted in the case of other like corporations whose property the board had assessed for the same year. It was not the mere action of individuals, but, under the facts herein detailed, it was the action of the State through the board. There is here no contention of illegality simply because of assessing the franchises of these corporations at a different rate from tangible property in the State, which the State might

do, *Coulter v. Railroad,* 196 U. S., 559, but it is asserted that the board assessed the franchises and other property of these companies at a different rate and by a different method from that which had been employed by the board for other corporations of the same class for that year. The result is an enormous disparity and discrimination between the various assessments upon the corporations. The most important function of the board, that of equalizing assessments, in order to carry out the provisions of the constitution of the State in levying a tax by valuation, 'so that every person shall pay a tax in proportion to the value of his, her, or its property,' was, in this instance omitted and ignored, while the board was making an assessment which it had jurisdiction to make under the laws of the State. This action resulted in an illegal discrimination, which, under these facts, was the action of the State through the board."

Franchise Tax.

The following are the grounds upon which we base our contention that the franchise tax law is void and the tax levied thereunder illegal:

1. So-called Franchise Tax Is a Property Tax and Void.

The bill avers that the so-called franchise tax is not a franchise tax measured by the value of the use of the property, but is in truth and in fact an *ad valorem* tax based on the value of the property.

If it is an *ad valorem* tax it is void because not levied equally upon all property holders in the State and is, therefore, contrary to Section 3 of Article 5 of the Constitution of North Carolina, and by reason of the enforcement thereof plaintiff is deprived of the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States.

This franchise tax is found in Section 82 (6½) of the Revenue Act of 1921. That Section provides:

> "The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for *ad valorem* taxes."

The amount of the franchise tax is one-tenth of one per cent on the assessed value of the property for ad valorem purposes. If the Commissioner of Revenue assessed the railroad for ad valorem purposes at a sum in excess of its true value, that excessive assessment worked also to the harm of the railroad in that it was used in arriving at the franchise tax.

The fact that this tax is called a franchise tax does not make it such a tax.

The syllabus in the case of *Choctaw v. Harrison* reads:

"Neither state courts nor legislature by giving a tax a particular name can take from this court its duty to consider its real nature and effect."

Choctaw vs. Harrison, 235 U. S. 292.
See also *Galveston vs. Texas,* 210 U. S. 217, 227.

"In determining the nature of a state tax and constitutionality of the statute imposing it, this court must regard substance rather than form and the controlling test is found in the operation and effect of the statute as applied and enforced."

St. L. & S. W. vs. Arkansas, 235 U. S. 350, 362.

Where the question, or questions, involved is whether a State taxing law contravenes rights secured under the Constitution of the United States, the decision must depend, not upon the mere question of form, construction, or definition, but upon the practical operation and effect of the tax imposed.

St. Louis, etc., Ry. Co. v. Arkansas, 235 U. S., 350.
Crew Levick Co. v. Pennsylvania, 245 U. S. 292.

The legislature has termed this a franchise tax, but, when measured by the definition of a franchise tax under the decisions of North Carolina and the United States Supreme Court, it is not a franchise tax, but a property tax of ten cents on the one hun-

dred dollars. To determine if this be correct, let us examine the decisions in order to ascertain what a privilege or a franchise tax is. The general rule, as set forth in the case of *Worth v. Railroad,* 89 N. C. 301, is:

> "Whenever a tax, as here, is imposed upon a corporation directly by the legislature and is not assessed by assessors, *and the amount depends on the amount of business transacted* by the corporation, and the extent to which it has exercised the privileges granted in its charter, without reference to the value of its property or the nature of the investments made of it, it is a franchise tax. Burroughs on Tax., 169. To the same effect is Attorney-General vs. Bank of Charlotte, 4 Jones' Eq., 287." (Italics the writer's.)

In the *Worth Case, supra,* the property of the defendant railroad had been exempted from taxation under the terms of its charter. In an effort to impose some tax upon that railroad and upon others similarly situated, the State legislature enacted the following law:

> "1. Every railroad or canal company incorporated under the laws of this State, and not liable to a tax upon the property of said company, or the shares thereof, shall pay to the state a tax on the corporation equal to the sum of 1 per cent upon the gross receipts of said company.
>
> "2. Every railroad and canal company incorporated under the laws of this State and doing business herein, and not liable to a tax upon the property of said company, or the tax

mentioned in this section, shall pay a tax of 1 per cent upon the actual cash value of every share of its capital stock, and the tax of twenty-five dollars per mile per annum as a privilege tax, for the year 1881, required by the Act of 1881, chapter 70, schedule C, section 1, to be paid in lieu of the last tax."

In determining whether the three different taxes were franchise taxes or not, the Supreme Court laid down the rule already referred to and thereby determined whether the three different taxes in question were franchise taxes. The tax in section 1, above quoted, was held to be a franchise tax. Likewise, the first tax in Section 2 (one per cent upon the actual cash value of every share of stock) was held to be a franchise tax. In holding the first tax in section 2 to be a franchise tax, the Court said, on page 306:

> "This tax, like the last, is not to be assessed by assessors, but is required to be paid to the Treasurer of the State upon a computation made by him upon a statement rendered by the treasurer of the company of its assets and liabilities, and is, based upon the authorities cited, a franchise tax, to which, as we have shown, the defendant is not liable."

The second tax referred to in Section 2 was also held to be a franchise tax. As said on page 307 of the opinion: "It is paid directly to the treasurer without any assessment by assessors, and is to be estimated by the length of the road."

Under the rule laid down in North Carolina, a franchise tax has the following characteristics:

1. It must be imposed upon a corporation directly by the legislature and not assessed by assessors.

2. The amount depends upon the amount of business transacted by the corporation and the extent to which it has exercised the privileges granted under its charter.

3. The tax must be imposed without reference to the value of its property or the nature of the investments made by it.

The rule as laid down in the *Worth Case* has not been changed by any subsequent case. None of the North Carolina cases cited by the defendants or elsewhere have changed the rule for determining whether a tax is a franchise or a property tax. In all of the cases cited in which the franchise tax has been upheld, the amount of the franchise tax has been measured by the amount of business done or there has been a definite tax charged for the privilege of doing business. For instance, in *Lacey v. Armour Packing Co.*, 134 N. C. 567, affirmed by the Supreme Court in 200 U. S. 226, a license tax of $100.00 was levied upon every meat packing house doing business in the State, for each County in which such business was carried on. This was a stated sum imposed upon each meat packing house for the privilege of doing intrastate business. Likewise, in the suit against *French,*

109 N. C. 722, a privilege tax measured by the amount of purchases was upheld. The other North Carolina cases cited by defendants dealt with similar taxes and none of them changed the rule laid down in the *Worth Case.*

The case of *Provident Institution vs. Massachusetts,* 6 Wall. 611, arose under a Massachusetts statute providing for "a tax on account of its depositors of one-half of one per cent per annum on the amount of its deposits, to be assessed, one-half of said annual tax on the average amount of its deposits for the six months preceding the first day of May, etc." Had this been held to be a property tax it would have been invalid under the State Constitution. In holding it to be a franchise tax the Supreme Court of the United States said, beginning on page 630, as follows:

> "Considered as a tax on property no part of the tax could be supported under the constitution of the State, and there never was a moment when such a tax, if viewed as a property tax, could be upheld since the State was organized under a written constitution. The amount of the tax does *not* depend on the amount of the property held by the institution, but it depends upon the *capacity* of the institution to *exercise the privileges conferred by the charter.*
>
> "*Valuation of property has nothing to do with determining the amount of the tax,* but the amount depends on the average amount of the deposits for the six months preceding the respective days named, and it is quite obvious that there is no necessary relation between the

average amount of the deposits and the amount of the property owned by the institution. Granting that it is not a property tax, then it must be considered as a franchise tax laid upon the corporation for the privileges conferred by the charter, which, by all the authorities, it is competent for the State to tax irrespective of what disposition the institution has made of the funds, or in what manner they may have been invested. Counties, cities, towns and school districts, as well as the State, may impose and levy reasonable assessments, rates and taxes upon property, but the assessment to the corporation defendants, if paid, exempts them from all other taxation for the current year."

And further, beginning on page 631:

"Franchise taxes are levied directly by an act of the legislature, and the corporations are required to pay the amount into the State treasury. They differ from property taxes, as levied for state and municipal purposes, in the basis prescribed for computing the amount, in the manner of assessment, and in the mode of collection, and they are in lieu of all other taxation, state or municipal. Comparative valuation in assessing property taxes is the basis of computation in ascertaining the amount to be contributed by an individual, but the amount of a *franchise tax* depends upon the *business transacted* by the corporation and the extent to which they have exercised the privileges granted in their charter. Unlike as the two systems are in every particular, it seems to be a work or supererogation to point out the dif-

ferences, which are radical and substantial." (Italics the writer's.)

The rule is set forth in *State vs. Stonewall Insurance Company,* 89, Ala. 335, 7 So. 753, on page 754, as follows:

> "Owing to the difficulty of distinguishing between the capital, and the property in which it is invested, tests for determining whether a tax is on the property or the franchises may be regarded, generally, as uncertain and unsatisfactory; yet its determination is often necessary, for, if a franchise tax, the property in which the capital is invested becomes immaterial. The usual and most certain test is whether the tax is upon the capital stock, *eo nomine,* without regard to its value, or at its assessed valuation in whatever it may be invested. If the former, it is a franchise tax; if the latter, a tax upon the property."

A franchise tax is not a tax on the property of the corporation.

Tremont, etc., v. Lowell, 59 N. E. 1007.

A franchise tax when applied to a domestic corporation is the tax upon the right of a corporation to exercise the privileges conferred upon it, and is not a property tax.

Chicago & E. I. R. Co. v. State, 51 N. E. 924.

The franchise tax is not laid on property at all, but is imposed on the corporation for the privilege

of carrying on business in the State and exercising corporate franchises granted by the State.

People v. Knight, 174 N. Y. 475, 67 N. E. 65.

In a note in 57 L. R. A. the rule is stated as follows on page 48:

> "A franchise tax and a property tax, when the two approach each other, ordinarily may be distinguished by the respective methods adopted by laying them and fixing their amounts. If a tax is imposed directly by the legislature without assessment, and its sum is measured by the amount of business done or the extent to which the conferred privileges have been enjoyed or exercised by the taxpayer irrespective of the nature or value of the taxpayer's assets, it is regarded as a franchise tax; but if the tax is computed upon a valuation of property, and assessed by assessors either where it is situated or at the owner's domicile, although franchise privileges may be included in the valuation, it is considered a property tax."

Disregarding the designation given the so-called franchise tax by the legislature and looking at it in the light of the characteristics of a franchise tax set forth by the Supreme Court of North Carolina and other courts, this so-called franchise tax has none of the incidents of a franchise tax, but all of the incidents of an ad valorem tax. It is assessed by the same assessing officer that assessed the property for the ad valorem tax. As a matter of fact, it is the same assessment and the tax is imposed

upon the property to the same extent as it is imposed upon the property in the case of the ad valorem tax. The amount of the tax is not measured by the value of the property of complainant in North Carolina, used in its business, whether intrastate or interstate, nor is it measured by the volume or amount of business done in North Carolina. By the terms of the statute under which it is imposed, the value of complainant's property in North Carolina for the ad valorem tax is taken to be the value of the franchise for the purpose of the so-called franchise tax. If the value increases, the tax increases; if it diminishes, the tax diminishes.

If we are correct that this tax is nothing more nor less than an additional ad valorem or property tax, it is void because not levied equally upon all property holders in the State and is, therefore, contrary to Section 3 of Article 5 of the Constitution of North Carolina, and, if enforced, plaintiff will be deprived of the equal protection of the law secured under the Fourteenth Amendment to the Constitution of the United States.

2. The Tax Is Measured by the Property Owned in the State.

The situation is this: The Tax Commission assessed plaintiff's property for taxation in 1920 at $96,605,694.00 and the Revenue Commissioner assessed the property in 1921 at $96,306,357.00, a reduction of $299,000.00. The defendants explain the reduction in their answer as follows:

"He (Revenue Commissioner) merely exercised the authority given him to review the said assessment of 1920, and reduced the same to ninety-six million three hundred and six thousand three hundred and fifty-seven dollars ($96,306,357), as hereinbefore stated, refusing to reduce the said assessment of 1920, except by the application to it of certain *reductions* on properties of the plaintiff lying off the right of way as hereinafter stated." (38)

See also the answer Rec. p. 43.

The foregoing shows that the total included all the property, not only that assessed by the Commissioner of Revenue, but that assessed locally; otherwise the deduction would not have been made. The plaintiff owns non-carrier property which is assessed locally.

The franchise tax law (82(6½)) provides that such tax be levied on the value of the property, tangible and intangible, assessed for ad valorem taxes, and acting thereunder the State levied and collected in 1920 a franchise tax of $96,605.69 and in 1921 demanded a franchise tax of $96,306.35 (69, 70), being one-tenth of one per cent of the value of all of plaintiff's property in North Carolina for ad valorem purposes. This is admitted in the answer (38, 53). The law as set forth in Sec. 82(6½) so provides.

In Section 62 of Chapter 92, Public Laws, 1919, it is provided that there shall be a deduction of the property assessed locally from the total assessed value "before the apportionment is made to the

counties and municipalities." The purpose of the deduction is to allocate to counties and cities certain local property before dividing the total on a mileage basis, but nowhere is it provided that the franchise tax shall be calculated on the total less the local property. On the contrary, the franchise tax in 1920 and 1921 was on the total less only the "reductions" made by local taxing authorities.

As we understood the argument below, if as we say, the franchise tax was based on the total ad valorem assessment of all property an improper measure had been used, but that if such were the case it could be corrected by the Court. We think this an error. No change contrary to the statute can be made by the tax authorities or the Court.

See *Oklahoma vs. Wells Fargo & Co.*, 223 U. S., 198, in which case the court held that "where a state statute requires that a corporation doing both interstate and intrastate business return its gross receipts from all sources, the taxing feature of the statute cannot be construed as relating only to receipts from intrastate commerce, and sustained separately in that respect." In reaching this conclusion, the court said, on page 302:

> "Neither the court below nor this court can reshape the statute simply because it embraces elements that it might have reached if it had been drawn with a different measure and intent."

To the extent that this tax is measured by such property as is not used in the business in North

Carolina, there is imposed an additional tax upon such property. This is in violation of the Constitution of North Carolina, and renders the tax invalid.

There is this further objection to the so-called franchise tax: In all States of which we have any knowledge other than North Carolina, the law provides for a method of ascertaining the total value of the property by capitalizing the net income or by fixing the total value of the capital stock and from this total there is deducted the assessed value of the tangible property and what is left is held to be the value of the corporate franchise. In North Carolina the law provides for a method of arriving at the total value, namely, by arriving at the tangible and the intangible value. It then provides that this total shall be assessed as the franchise value. The result is that the assessed value for *ad valorem* purposes includes an intangible value or the value of the franchise, and the assessed value of the franchise includes the assessed value of the tangible. This is not right nor is it legal.

3. The Amount of Franchise Tax Is Double the Amount it Should be Under Section 82(3½) of the North Carolina Revenue Law.

Section 82(3½) of the Revenue Act, Chapter 34, Public Laws, 1921, provides:

"That where a report required to be made

under the provisions of this Section to the State Tax Commission by any domestic corporation or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under the rules laid down in Section 82 of this act to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which such report is made, the measure of the extent to which the corporate franchise of any such corporation is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation in this State."

Southern Railway reported under that Section 82(6½) a capital stock of $120,000,000.00 and a preferred stock of $60,000,000.00, making a total of $180,000,000.00. Apportioned on a mileage basis, the capital stock of plaintiff apportioned to North Carolina would be $28,222,626.00. One-half of the assessed value for taxation would be forty-eight million dollars. Therefore, the capital stock apportioned is less than half of the assessed value. Notwithstanding this, the franchise tax of plaintiff is demanded on the full value for *ad valorem* purposes, instead of on one-half of the total assessed value. Doubtless the State holds that the above quoted Section 82(3½) does not apply to railroads because of Section 82(9), which reads as follows:

"That nothing in the nine preceding sub-sections of this act shall apply to banks, insurance companies, fraternal beneficent associations, building and loan associations, express, telephone or telegraph companies, or other corporations, upon which a franchise tax may be levied in other sections of this act."

This is, we think, an error, because Sub-section (9) of Section 82 provides that the nine preceding sub-sections shall not apply to the named companies or to "other corporations, upon which a franchise tax may be levied in *other* sections of this act." Railroads are not assessed in other sections of this act, but in this section of the act, and therefore Sub-section 82(3½) applies to railroads.

This is made more certain by a history of the legislation. Section 82(9) of Chapter 90 of the Laws of 1919, provided that the nine preceding sub-sections should not apply to various companies and named a railroad as one of the companies to which the preceding sub-sections did not apply. The 1920 Revenue Law, in Chapter 1, Public Laws, Extra Session 1920, Section 7(d), amended Section 82, Sub-section (9) as follows:

"By striking out of the third line of the said sub-section the word 'railroad.'"

It is therefore plain that it is not an unintentional omission.

Our contention is made certain by Section 3 of

Chapter 102, Public Laws, Extra Session 1921, approved December 19, 1921, which reads:

> "Sec. 3. That chapter thirty-four, Public Laws of one thousand nine hundred and twenty-one, section eighty-two, sub-section (9), be and the same is hereby amended by inserting the word 'railroads' in line two thereof between the words 'to' and 'banks.'"

We contend that the status of the law at the time the assessment was made and the franchise tax became due shows plaintiff entitled to the benefit of Section 82(3½).

4. If the Tax Levied Under Section 82(6½) is a Franchise Tax, it is Invalid in That it is an Unconstitutional Burden on Interstate Commerce.

As stated heretofore, we think that while this tax is called a franchise tax, it is in truth a property tax. If we are in error as to this, then it seems to us clear that the tax can not be upheld as a privilege tax. It is an unconstitutional burden on interstate commerce. In our discussion of this tax, we refer, of course, to the law as it stood in Section 82(6½) of the Revenue Act of 1921 at the time the levy was made and at the time the bill in this case was filed. We do not refer to the effort made by the Legislature at its Special Session of December, 1921, to correct the illegality of Section 82(6½) by repealing that Section and amending the law by enacting Section 78.

It will be well to note the difference between Section 82(6½) and the new Section 78—

Section 82(6½)	New Section 78
"* * * the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated."	"* * * the Commissioner of Revenue shall ascertain and certify to the State Auditor the value upon which the amount of tax to be paid by any such railroad as a license or privilege tax shall be calculated."
"* * * the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each railroad company in the State assessed for the year in which such report is made for *ad valorem* taxes."	"* * * the measure of extent to which every such railroad company is carrying on intrastate commerce within the State of North Carolina shall be the value of the total property, tangible and intangible, in this State of which such railroad company is assessed for *ad valorem* taxation for the year in which such report is made.
"The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be," etc.	"The tax which every railroad company shall pay for the privilege of carrying on intrastate commerce within this State shall be," etc.
	"Provided, that it is the intention of this section to levy upon railroads a license or privilege tax for the privilege of engaging in intrastate commerce carried on wholly within the State of North Carolina and not a part of interstate or foreign commerce; that the tax provided for in this section is not intended to be a tax on the privilege of engaging in interstate commerce, nor is it intended to be a tax on the business of interstate commerce, nor is it intended to be a tax having any relation to the interstate or foreign business or commerce in which any such railroad company may be engaged in addition to its business in this State."

The old law levied a franchise or privilege tax for the exercise of the railroad's franchise in the

State. The amended law levies a license or privilege tax for the carrying on of intrastate commerce within the State of North Carolina. The proviso or saving clause at the foot of the new law seeks to set forth a constitutional intent. If the law burdens interstate commerce, it is unconstitutional, and whether it does or not will depend upon its practical operation.

International Paper Co. vs. Mass., 246 U. S. 135.

From the many decisions of the Supreme Court of the United States, there may be deduced the following fundamental principles as underlying all taxation wherein interstate commerce is involved:

(1) "No State can compel a party, individual, or corporation to pay for the privilege of engaging in interstate commerce."

(2) "This immunity does not prevent a State from imposing ordinary property taxes upon property having a situs within its territory and employed in interstate commerce."

(3) "The franchise of a corporation, although that franchise is the business of interstate commerce, is, as a part of its property, subject to State taxation, providing at least the franchise is not derived from the United States."

See *Atlantic, etc., Telephone Company vs. Philadelphia*, 190 U. S., 160, 162, 163, and cases therein cited in support of the above propositions.

We have made an earnest effort to square this law with the above principles and have reached the conclusion that it violates these principles.

For convenience, we set out a part of Section 82(6½):

> "Sec. 82(6½). *Railroads.* Every railroad company doing business in this State shall annually on or before the thirtieth day of July make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one per cent (0.1%) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year."

The points to which we direct attention in the foregoing law are that what is levied is a franchise or privilege tax for the privilege of exercising its franchise in the State based upon the ad valorem value. This law burdens interstate commerce when read in connection with Section 64 of the Machinery Act, which sets forth the method of assessment of tangible and intangible property of railroads in North Carolina to find the ad valorem value and is, in part, as follows:

"Sec. 64. *Tangible and intangible property assessed separately.*

"(a) At such dates as real estate is required to be assessed for taxation, the said commission shall first determine the value of the tangible property of each division or branch of such railroad of rolling stock and all other physical or tangible property. This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property.

"(b) They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness,

bonds, or any other securities, the value of which is based upon the earning capacity of the property.

"(c) The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof," etc.

In the foregoing Section 64, North Carolina has imposed a *property* tax upon the property of the Southern Railway Company situated in North Carolina, whether such property is employed in intrastate commerce or interstate commerce or both, and such a tax is permissible. In addition, there is added to the tangible value the franchise value and that franchise value is to be arrived at by a consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public as evidenced by the market value of all capital stock and securities. The effort was and the result is that the property of the Southern Railway Company is valued as a going concern and the franchise value is arrived at and taxed as property, notwithstanding the factors used in arriving at this property franchise value include values derived from interstate commerce. That value from interstate commerce is included is certain in that the law di-

rects: (1) that the gross earnings be used, as compared with the operating expenses and such gross earning are not confined to earnings within the State, and (2) by a consideration of the market value of all the capital stock, bonds and other securities not limited to securities issued on property within the State or to the value of the securities derived from intrastate business, but necessarily including interstate values as well. It is permissible under the decisions of the Supreme Court of the United States to arrive at the ad valorem value in the manner set forth.

The franchise tax law, as has been seen, is not measured by the amount of intrastate business done, nor by the value of the property in the State used in intrastate commerce, but, as stated, by the value of the property in the State for ad valorem taxes, which value, as we have attempted above to show, includes the value of the franchise as a going concern engaged in both interstate and intrastate commerce. While a property tax might be so levied in an effort to and as a means of ascertaining the value of property situated in the State, a privilege tax can not, under the decisions, be so levied.

The Supreme Court states the rule as follows:

> "Consistently with the Commerce Clause of the Federal Constitution, the State could not tax the privilege or act of engaging in interstate commerce, but could tax the Company's property within the State, although chiefly employed in such commerce."

Wells Fargo vs. Nevada, 248 U. S., 165, 167.
Adams Express vs. Ohio, 165 U. S., 194, 220.
Harrisburg vs. Texas, 210 U. S., 217, 225, 249.

The privilege of doing an interstate business in the State of North Carolina is not one conferred upon the Southern Railway Company by that State and therefore that State can not impose a franchise tax upon the Southern Railway Company for using its franchise in interstate business in the State. This rule is stated in *Kansas City Railway vs. Kansas,* 240 U. S., 227, at page 231, as follows:

> "It must be assumed in accordance with repeated decisions, that the State can not lay a tax on interstate commerce 'in any form,' by imposing it either upon the business which constitutes such commerce or the privilege of engaging in it, or upon the receipts as such derived from it."

In *Postal Telegraph & Cable Company vs. Adams,* 155 U. S., 688, 695, Chief Justice Fuller said:

> "It is settled that where by way of duties laid on the transportation of the subjects of interstate commerce, or on the receipts derived therefrom, or on the occupation or business of carrying it on, a tax is levied by a State on interstate commerce, such taxation amounts to a regulation of such commerce and cannot be sustained."

The State could not levy a franchise tax for the privilege of doing an interstate business. It has levied a franchise tax without specifying whether it is for the privilege of doing an intrastate business or for the privilege of doing interstate commerce, but it is based on a value which includes a franchise value derived from the doing of interstate commerce as well as intrastate commerce. If that is legal, then the State has done indirectly what it could not do directly.

In this particular case, the burden on interstate commerce is, under the principles above enunciated, clearly shown in this: The State arrived at its value by capitalizing $6,117,625.00. That sum was supposed to be the North Carolina proportion of the net derived from both interstate and intrastate commerce. As before stated, the use of that method to determine the value of the physical property when you levy an ad valorem tax has been upheld, unless contrary to the statute and unless wrong amount capitalized, but when you levy a privilege tax and arrive at the value in the manner above stated, you are necessarily levying indirectly a privilege tax for the doing of interstate commerce. That the franchise tax imposed upon railroads by the laws of North Carolina is invalid and that the foregoing principles are correctly applied to the case is shown by the decisions of the Supreme Court of the United States.

In the case of *Galveston, etc., Ry. Co. vs. State of Texas,* 210 U. S., 217, that Court considered a

statute of the State of Texas imposing a tax upon all railroads within that State equal to one per centum of its gross receipts, and held it invalid. In reaching that conclusion, the Court said, beginning on page 227, as follows:

> " 'By whatever name the exaction may be called, if it amounts to no more than the ordinary tax upon property or a just equivalent therefor, ascertained by reference thereto, it is not open to attack as inconsistent with the Constitution.' *Postal Telegraph Cable Co. vs. Adams,* 155 U. S., 688, 697. See *New York, Lake Erie & Western R. R. Co. vs. Pennsylvania,* 158 U. S., 431, 438, 439. The question is whether this is such a tax. It appears sufficiently, perhaps from what has been said, that we are to look for a practical rather than a logical or philosophical distinction. The State must be allowed to tax the property and to tax it at its actual value as a going concern. On the other hand the State cannot tax the interstate business. The two necessities hardly admit of an absolute logical reconciliation. Yet the distinction is not without sense. When a legislature is trying simply to value property, it is less likely to attempt to or effect injurious regulation than when it is aiming directly at the receipts from interstate commerce. A practical line can be drawn by taking the whole scheme of taxation into account. This must be done by this court as best it can. Neither the state courts nor the legislatures, by giving the tax a particular name or by the use of some form of words, can take away our duty to consider its

nature and effect. If it bears upon commerce among the States so directly as to amount to a regulation in a relatively immediate way, it will not be saved by name or form. *Stockard vs. Morgan,* 185 U. S., 27, 37; *Asbell vs. Kansas,* 209 U. S., 251, 254, 256.

"We are of opinion that the statute levying this tax does amount to an attempt to regulate commerce among the States."

In *Western Union Telegraph Co. vs. Kansas,* 216 U. S., 1, a statute of Kansas provided among other things that before a foreign corporation, even one engaged in interstate commerce, should have authority to do local business in the State, it should pay a graduated franchise tax upon its authorized capital. In holding this tax invalid, this court, beginning on page 26, said:

"We are aware of no decision by this court holding that a State may, by any device or in any way, whether by a license tax, in the form of a 'fee,' or otherwise, burden the interstate business of a corporation of another State, although the State may tax the corporation's property regularly or permanently located within its limits, where the ascertainment of the amount assessed is made 'dependent in fact on the value of its property situated within the State.' *Postal Telegraph Co. vs. Adams,* 155 U. S. 688, 696; *Leloup vs. Mobile,* 127 U. S. 640, 649. On the contrary, it is to be deduced from the adjudged cases that a corporation of one State, authorized by its charter to engage in lawful commerce among the States, may not be prevented by another State

from coming into its limits for all the legitimate purposes of such commerce. It may go into the State without obtaining a license from it for the purposes of its interstate business, and without liability to taxation there, on account of such business.

"But it is said that none of the authorities cited are pertinent to the present case, because the State expressly disclaims any purpose by the statute in question to obstruct or embarrass interstate commerce, but seeks only to prevent the Telegraph Company from entering the field of domestic business in Kansas without its consent and without conforming to the requirements of its statute. But the disavowal by the State of any purpose to burden interstate commerce cannot conclude the question as to the fact of such a burden being imposed, or as to the unconstitutionality of the statute as shown by its necessary operation upon interstate commerce. If the statute, reasonably interpreted, either directly or by its necessary operation, burdens interstate commerce, it must be adjudged to be invalid, whatever may have been the purpose for which it was enacted, and although the company may do both interstate and local business. This court has repeatedly adjudged that in all such matters the judiciary will not regard mere forms, but will look through forms to the substance of things. Such is an established rule of constitutional construction as the adjudged cases abundantly show."

It may appear on a first reading that the rule as laid down in the *Galveston Case* in 210 U. S., and

the *Western Union Case* in 216 U. S., is overruled by the case of *St. L. & S. W. Ry. vs. Arkansas,* 235 U. S. 350. There are certain excerpts in the *St. L. & S. W. Case* which taken alone might indicate a contrary holding, but the decision as a whole does not change the rule laid down in the above cases. In the *St. L. & S. W. Case* the Attorney General brought suit for the sum of $6,798.26, being the franchise tax with penalty and interest.

The Court, in the *St. L. & S. W. Case,* at p. 363, said:

> "The tax, as will be observed, is not in anywise based upon the receipts of the railway company from interstate commerce, either taken alone or in connection with receipts from its intrastate business. Since, therefore, the amount of the imposition is not made to fluctuate with the volume or the value of the business done, we are relieved from those difficulties that arise where said taxes are based upon the earnings of interstate carriers."

citing the *Galveston Case* and others.

The North Carolina tax is not in terms based upon the receipts of the railroad company from interstate commerce, but it is based upon a value a part of which value is derived from interstate business as well as local business, and if the North Carolina statute be followed, the amount of the tax would fluctuate with the volume or the value of the business done. This seems clear, because

to arrive at the value which is the basis of the tax, the statute says that the Revenue Commissioner *shall* consider the net earnings, not limiting them to the net earned in the State, and shall particularly consider the value as ascertained from the market value of the stocks and bonds, in which case it is impossible to limit them to a State value. Therefore, in the *North Carolina Case* the Court is confronted with the difficulties that arose in the *Galveston* and other cases.

It is true that a tax may be imposed on the property of a railroad within the State of North Carolina and value derived from use of such property in interstate commerce may be included, but it has nowhere been held, and we do not think it will be held, that a privilege tax can be based on an ad valorem value if the law compels the ad valorem value to be ascertained by considering elements which bring in the earnings from interstate commerce which fluctuate from time to time.

The later decisions of the Supreme Court make it clear that it was not the intent of the Supreme Court to overrule the *Galveston Case* in the 210th U. S., or the *Western Union Case* in the 216th U. S.

See *International Paper Co. vs. Massachusetts*, 246 U. S. 135.

The cases above referred to did not deal with statutes precisely like those of North Carolina, but they lay down the fundamental principles and rules by which the validity of the franchise tax in question must be determined.

North Carolina has attempted to exercise its taxing power with respect to a matter under its jurisdiction, but it has attempted to exercise it in a wrong manner when it adopted as a measure of the tax the value of the tangible property plus the value of the use of the franchise in interstate commerce plus the value of the use of the franchise in intrastate commerce. North Carolina cannot impose a franchise tax on the Southern Railway Company for the privilege of engaging in both interstate and intrastate commerce, yet in imposing a franchise tax on the privilege of engaging in business and measuring the tax in part by the value of the use of the franchise in interstate commerce, it has attempted to do indirectly what it could not do directly. The tax is therefore invalid as an unconstitutional burden on interstate commerce.

5. The Franchise Tax Law is Invalid in That it Imposes a Condition Upon the Right of This Foreign Corporation Engaged in Interstate Commerce to Transact Interstate Commerce.

Attention is directed to the following Sections of the North Carolina Revenue Act of 1921:

Section 82(6½) levies a franchise tax of one-tenth of one per cent on "Every railroad company doing business in the State, etc."

Section 82(17) provides, in substance, that if a corporation, wherever organized, fails for ninety days to pay the tax levied under this law, the Com-

mission shall certify the fact to the Secretary of State. The Secretary of State shall thereupon "cancel the certificate of authority of any such foreign corporation to do business in the State." Thereupon all the privileges and franchises conferred upon such corporation by such certificate shall cease and determine.

Section 82(20) provides that in addition to all other remedies for the collection of any taxes due under this Act, the Attorney General shall, upon request of the State Treasurer, whenever any such taxes have remained unpaid for ninety days, apply to the Superior Court of Wake County or of any County in the State in which such corporation has an office for an injunction "to restrain such public utility or corporation from the transaction of *any* business within this State until the payment of such taxes," etc. (Italics the writer's.)

Section 85 provides that a license must be procured before beginning business and each corporation which engages in any business for which a license is required shall procure said license in advance. Any corporation which engages in any business for which a license is required by this Act without first having procured a license therefor shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the Court: Provided, the fine shall not be less than 20 per cent of the tax in addition to the tax and the cost.

The decided cases are plain that payment of the tax cannot be made a condition precedent to the

right of the corporation to carry on business, including interstate commerce.

In the case of *Ludwig vs. Western Union Telegraph Company,* 216 U.S. 146, the Supreme Court of the United States had under consideration an Act of the State of Arkansas entitled, "An Act to Permit Foreign Corporations to Do Business in Arkansas and Fixing Fees to Be Paid by All Corporations." Section 2 of the Act provided in part, "Any foreign corporation *which shall fail to comply with the provisions of this Act,* and shall do *any* business in this State shall be subject to a fine," etc. The Court, in discussing the case, after referring to the fact that the statute was "made applicable to *every* company," said at page 156:

> "We have seen that the Act of 1907 provided that if any foreign corporation, without the consent of the other party to any suit brought by or against it in any state court should remove such suit to the Federal Court, or institute a suit against a citizen of Arkansas in the Federal Court, it became the duty of the Secretary of State to forthwith revoke all authority in the company and its agents to do business in Arkansas and publish such revocation in some newspaper of general circulation in the State; and if after such revocation the company continued to do *any* business in Arkansas it became subject to a fine of not less than $1,000 *for each day* it so continued, to be recovered by suits instituted by prosecuting attorneys in the name of the State for the use and benefit of the County in which the suit was brought; so, if the company failed to comply with any of the provisions of the act it became subject

to a fine of $1,000," etc. (Italics are in opinion.)

After referring to the fact that the statute was "made applicable to *every* company," it said at page 160:

> "According to the words of the statute, not unreasonably construed, every corporation of another State, seeking to do business in Arkansas, whether interstate or domestic, in order that it may do business of any kind in Arkansas, without coming into conflict with the statute, must file a copy of the authenticated charter with the Secretary of State; and it seems that before that officer will file such copy the corporation must pay to him a given amount based upon its capital stock, representing, necessarily, *all* its business, interstate and intrastate, as well as *all* its property everywhere, *beyond as well as within the State.* If the foreign corporation, without first paying those amounts, does business of any kind in the State it will incur not only the penalty of $1,000 for so doing but will forfeit its right to make any contract in the State, enforcible in law or equity—whatever its subject-matter—even if it be one relating to the business of the United States or to commerce among States. A statute of that kind would be palpably in conflict with the Constitution, and, especially an invasion of rights under that instrument of a corporation engaged in interstate commerce and seeking to do business in Arkansas."

It was pressed upon the Court that, due to certain decisions of the Arkansas court, the statute should be construed to have been intended only to impose terms upon the right to carry on *intra*state business and was valid. The Court said "but the acceptance of this view would not remove the difficulty which confronts the State in the present case." It held that the requirement that the foreign corporation pay a tax based on its entire capital stock or incur drastic penalties was in effect a condition under that statute for engaging in interstate business and therefore void as a burden thereon.

A similar situation was presented in the case of *Illinois Central v. Mississippi Railroad Commission*, 229 Fed. 248. In its opinion, the Court said, on page 255, what is equally applicable to this case:

> "From them the conclusion is irresistible that a State statute exacting of one engaged in interstate commerce and governmental business a license for the privilege of doing business, in general terms and without expressly exempting from its terms interstate and governmental business, and which has not been construed to do so by the court of last resort of the State of its enactment, is to be construed as exacting a license for engaging in all business, including interstate commerce and governmental business, as to persons or corporations so engaged, and void as to them, though so measured as not to come in conflict otherwise with the constitution. Under the language of the Act of Mississippi, railroad com-

panies could be prosecuted for exercising the privilege of doing a railroad business without taking out a license, though they were engaged in business purely of an interstate and governmental character, and there has been no contrary construction of this Act in this respect by the Supreme Court of Mississippi."

In the case of *Underwood Typewriter Company v. Chamberlain,* 254 U. S. 113, the Court, at page 119, said:

"It is contended that the tax burdens interstate commerce and hence is void under Section 8 of Article 1 of the Federal Constitution. Payment of the tax is not made a condition precedent to the right of the corporation to carry on business, including interstate business. Its enforcement is left to the ordinary means of collecting taxes. St. Louis Southwestern Ry. Co. v. Arkansas, 235 U. S. 350, 364; Atlantic & Pacific Telegraph Co. v. Philadelphia, 190 U. S. 160, 163. The statute is, therefore, not open to the objection that it compels the company to pay for the privilege of engaging in interstate commerce."

In the case of *St. L. & S. W. Ry. v. Arkansas,* 235 U. S. 350, the Court had before it a statute of Arkansas prescribing fees to be paid by domestic and foreign corporations for the privilege of doing intrastate business in Arkansas, and said, at page 368:

"If this must needs be construed to mean that for non-payment of the franchise tax a

> foreign railroad corporation engaged in business as a common carrier of intrastate and interstate commerce is to forfeit its right to do business in the State, not only with respect to intrastate but also with respect to interstate commerce, the effect would be to impose a condition upon its right to transact interstate commerce, and the act would be invalid as amounting in effect to a regulation of that commerce; unless, indeed, Section 20 could be treated as separable. This result would follow from the principles laid down in Western Union Tel. Co. v. Massachusetts, 125 U. S. 530, 554; Leloup v. Port of Mobile, 127 U. S. 640, 644, 647; Western Union Telegraph Co. v. Alabama, 132 U. S. 472, 477; Allen v. Pullman Co., 191 U. S. 171, 179; and many other cases."

It is true the Court held that Section 20 of the Act, then under consideration, did not require it to be so construed as to interfere with interstate commerce, saying:

> "The forfeiture in terms is of 'the right of such corporation to do business in this State.' This does not necessarily include the right to transact business that is done partly within and partly without the State. The section does not call for an annulment of the charter."

Section 20 of the Act, then under consideration, as set forth by the Court on page 353, was in part:

> "In case any corporation shall fail to pay the franchise tax prescribed by this Act when it becomes due during the term of said certifi-

cate, the said tax commission shall cancel said certificate, and said corporation shall forfeit its right to do business in this State, in addition to the other penalties prescribed in this act."

Attention is directed to the fact that under Section 20 of the Arkansas statute the corporation shall forfeit its right "*to do business* in the State," whereas under Section 82(20) of the North Carolina Act, the Attorney General shall enjoin the "corporation from the transaction of *any* business within this State until the payment of such taxes, or fees and penalties thereon," etc.

Construing this Section of the Act in connection with the body of the Act, which levied a privilege tax for "the exercise of the railroad's franchise in the State" (not limited to intrastate business, as is done by the amendment), it seems to us that the plain ordinary meaning of the words prohibiting the doing of *any* business necessarily includes interstate business.

The language of Section 82(20) gives the Attorney General the right to apply "for an injunction to restrain such public utility or corporation from the transaction of *any* business within this State." For the Southern Railway to take a shipment from a point in North Carolina, destined to a point without the State of North Carolina, is enaging in business within the State.

The failure to limit this tax to intrastate commerce is noteworthy, especially since it was so lim-

ited where imposed on other corporations engaged in interstate commerce.

Under Section 77, the tax on chair and sleeping cars is limited to the gross receipts from passengers carried within the State.

Under Section 79, a privilege tax is imposed on express companies and it contains a proviso that "nothing in this Section shall be construed to authorize the imposition of any tax upon interstate commerce, or for any business transacted for the Federal Government."

Under Section 80, privilege tax is imposed upon telegraph companies, and such section contains the same proviso as contained in Section 79.

It seems, therefore, that it was not the intention of the legislature to impose the so-called franchise tax upon railroads for the privilege of engaging in intrastate commerce alone. Had it so intended, it could have evidenced that intent as it did in the case of other public utilities engaged in interstate commerce and as it did in the amendment passed December, 1921. Even though it had been the intention of the Legislature to limit such tax as imposed upon the privilege of engaging in intrastate commerce, nevertheless, it has exacted payment thereof as a condition precedent to the right to engage in interstate commerce, since it has provided that an injunction shall be issued to restrain from doing "any business."

Principles Governing Issuance of Interlocutory Injunctions.

As has been frequently held, the issuance of a preliminary injunction calls for the exercise of sound judicial discretion. In this case, since the statute provides for an appeal from the refusal of the interlocutory injunction asked, the duty is upon this Court to review the exercise of the discretion.

The text writers, the English Courts, the Federal Courts and the State Courts are practically unanimous in upholding the below set forth principles governing the issuance of a temporary injunction.

The rule in such cases is set forth in 1 High on Injunctions, Sec. 5, page 8, as follows:

> "Interlocutory injunction not decisive upon the merits, it is to be constantly borne in mind that in granting temporary relief by interlocutory injunction, courts of equity in no manner anticipate the ultimate determination of the questions of right involved. They merely recognize that a sufficient case has been made out to warrant the preservation of the property or rights in issue *in statu quo* until a hearing upon the merits, without expressing, and indeed without having the means of forming a final opinion as to such rights. And in order to sustain an injunction for the protection of property *pendente lite* it is not necessary to decide in favor of plaintiff upon the merits, nor is it necessary that he should present such a case as will certainly entitle him to a decree upon the final hearing, since he may be entitled to an interlocutory injunction, although his

right to the relief prayed may ultimately fail. Nor is the decision of the court in granting or refusing a preliminary injunction conclusive upon either the court or parties on the subsequent disposition of the cause by final decree. The Court will not, however, upon an application for an interlocutory injunction, shut its eyes to the question of the probability of plaintiff ultimately establishing his demand, nor will it by injunction disturb defendant in the exercise of a legal right without a probability that plaintiff may finally maintain his right as against that defendant. And where the question involved is merely of a pecuniary nature, plaintiff will not be allowed an interlocutory injunction unless he can satisfy the Court that there is a probability that his bill will not be dismissed upon the hearing."

The rule is stated in 10 Encyc. Pl. & Pr. 1010, as follows:

> "It is not proper, on an application for a preliminary injunction, to decide, or to consider with a view to a final decision, the merits of the controversy, especially where grave questions of law are involved; and the Court should do no more than determine that the bill, assuming its allegations to be true, sets forth facts sufficient to warrant the issuance of an injunction."

And in 22 Cyc. 751, as follows:

> "It is not sufficient ground for refusing a preliminary injunction that it is not absolutely certain that complainant has the right that he claims or that the injury feared will occur;

and even though complainant's right to permanent relief is doubtful it may be proper to maintain the *status quo* pending the determination of his right, the issuance of a temporary injunction in such cases depending chiefly upon the relative inconvenience to be caused the parties."

See also 14 R. C. L., 357.

That the same rule prevails in England is shown by three English cases cited in *Harriman vs. Northern Securities Company,* 132 Fed. 464, on page 477. In that case, the Court quoted the rule from *Glascott vs. Lang,* 3 Myl. & C. 451, 455, as follows:

"In looking through the pleadings and the evidence, for the purpose of an injunction, it is not necessary that the Court should find a case which would entitle the plaintiff to relief at all events. It is quite sufficient if the Court finds, upon the pleadings, and upon the evidence, a case which makes the transaction a proper subject of investigation in a court of equity."

See also *Great Western R. R. Co. vs. Birmingham, etc., R. Co.,* 2 Phil. Ch. 597:

The rule as applied in the Federal Courts is stated in *Harriman vs. Northern Securities Co.,* 132 Fed. 464, beginning on page 475, as follows:

"The granting or refusal of a preliminary injunction, whether mandatory or preventive, calls for the exercise of a sound judicial dis-

cretion in view of all the circumstances of the particular case. Regard should be had to the nature of the controversy, the object for which the injunction is sought, and the comparative hardship or convenience to the respective parties involved in the awarding or denial of the injunction. The legitimate object of a preliminary injunction, preventive in its nature, is the preservation of the property or rights in controversy until the decision of the case on a full and final hearing upon the merits, or the dismissal of the bill for want of jurisdiction or other sufficient cause. The injunction is merely provisional. It does not, in a legal sense, finally conclude the rights of parties, whatever may be its practical operation under exceptional circumstances. In a doubtful case, where the granting of the injunction would, on the assumption that the defendant ultimately will prevail, cause greater detriment to him than would on the contrary assumption, be suffered by the complainant, through its refusal, the injunction usually should be denied. But where, in a doubtful case, the denial of the injunction would, on the assumption that the complainant ultimately will prevail, result in greater detriment to him than would, on the contrary assumption, be sustained by the defendant through its allowance, the injunction usually should be granted. The balance of convenience or hardship ordinarily is a factor of controlling importance in cases of substantial doubt existing at the time of granting or refusing the preliminary injunction. Such doubt may relate either to the facts or to the law of the case, or to both. It may equally attach to, or widely vary in degree as between, the showing of the complainant and that of the defend-

ant, without necessarily being determinative of the propriety of allowing or denying the injunction."

See also *Allison vs. Corson* (Circuit Court of Appeals, Eighth Circuit), 88 Fed. 581, at page 584.

The foregoing decisions apply the rule of "comparative inconvenience," in the matter of issuance of injunctions. In this case, if the temporary injunction is not granted, the appellant will be subject to immediate and irreparable loss. It will be required to pay the taxes or suffer the penalties, a cloud would be cast upon the title to its property, and other irretrievable loss would fall upon it. As a practical matter, if the interlocutory injunction is denied and the Railway Company pays the taxes, the tax collecting officers would immediately disburse the same, and if the Railway finally prevailed in its suit, its judgment in many cases would not be of value because there would be no funds out of which it could make a recovery, and if there were it would require one hundred and fifty-seven separate suits in order to recoup. To recover the franchise tax an Act of the legislature would be required. The bill in its present shape does not pray a money judgment and no such judgment could in this case be recovered against the individual defendants. Unless, therefore, the temporary injunction is granted, a final victory on the part of the plaintiff will be in large measure fruitless. On the other hand, if the application for temporary injunction should be granted, there will be

no final disadvantage to the State if it ultimately wins; it will have the same property as security for the taxes and will receive payment in full with interest. In addition to this, the State has already received a very substantial part of the taxes claimed. The plaintiffs have not sought to delay the final outcome; on the contrary, they offered in writing to try the case on its merits the past summer term and are now willing and anxious for a final hearing. Weighing the situation of the two parties, an equity court should, we submit, under well established principles, grant the application for an interlocutory injunction.

Respectfully submitted,

S. R. PRINCE,
Counsel for Plaintiff.

L. E. JEFFRIES,
W. M. HENDREN,
C. O. AMONETTE,
Of Counsel.

APPENDIX

EXTRACTS FROM CONSTITUTION OF NORTH CAROLINA:

ARTICLE V.

Section 3. Taxation Shall be by Uniform Rule and ad Valorem: Exemptions. Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money * * * The General Assembly may also tax trades, professions, franchises and incomes, etc.

Section 6. Taxes Levied for Counties The total of the state and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the state for the term required by article nine, section three, of the constitution: Provided, further, the state tax shall not exceed five cents on the one hundred dollars value of property.

ARTICLE VII.

Section 9. All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same except property exempted by this Constitution.

EXTRACTS FROM CONSOLIDATED STATUTES OF NORTH CAROLINA:

Section 7979. Remedy of Taxpayer for unauthorized tax. Unless a tax or assessment, or some part thereof, be illegal or invalid, or be levied or assessed for an illegal or unauthor-

ized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole of in part, nor to restrain the sale of any property for the non-payment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taking of any personalty levied on by the sheriff to enforce payment of such tax or assessment against the owner thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the sheriff; but if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city, or town, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city, or town for the amount so demanded, including in his action against the county both state and county tax; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer.

EXTRACTS FROM CHAPTER 84, PUBLIC LAWS OF NORTH CAROLINA, SESSION 1919.

(REVALUATION ACT)

An Act to Provide for the Listing and Valuing of All Property, Real, Personal and Mixed, at Its Real Money Value.

The General Assembly of North Carolina do enact:

Chapter 234, Public Laws, 1917, continued in force for listing of property for 1919.

Section 1. That chapter two hundred and thirty-four of the Public Laws of one thousand nine hundred and seventeen, entitled "An Act to amend chapter two hundred and eighty-six of the Public Laws of one thousand nine hundred and fifteen, in relation to the assessment of property and the collection of taxes," be continued in full force and effect for the listing and valuing of all property for the year one thousand nine hundred and nineteen, and that the said act shall continue in full force and effect, except in so far as the said act may be revised and amended by this session of the General Assembly, and except in so far as it may be in conflict with the provisions of this act, and in all such cases where there may be such conflict the provisions of this act shall govern: Provided, the valuations lawfully fixed on real property in the year one thousand nine hundred and fifteen, except where such valuations have been or may be in the year one thousand nine hundred and nineteen changed on account of structures erected or destroyed since the valuation of one thou-

Proviso: valuations of 1915 except where changed on account of structures erected to remain valuations for 1919.

sand nine hundred and fifteen, or otherwise changed according to law, shall remain the valuation of such real property for the year one thousand nine hundred and nineteen.

Machinery provided for making complete value of all property, in accordance with Constitution.

Sec. 2. That for the purpose of making a complete list of all the property of every citizen of the State, real, personal and mixed, and of having all of such property valued in accordance with the rule laid down in the Constitution of the State at its true value in money, and to be adopted and used as the basis of all taxes levied by the State, counties, cities, towns and other taxing districts of the State for the year one thousand nine hundred and twenty, the machinery hereinafter set out is provided.

TAX RATES.

Assessment not to be used as basis of taxes until approved by General Assembly and revised by districts.

Sec. 3. The assessment made under the provisions of this act shall not be used as the basis for computation of taxes unless and until the same has been approved by the General Assembly and until the tax rates levied by the State have been revised by the General Assembly, and the tax rates levied by the counties, cities, towns and special tax districts of the State have been revised under rules to be laid down by the General Assembly, and such rates shall in all cases be so adjusted that an increase in revenue from the general property tax of not more than ten per cent shall be levied and collected in the year one thousand nine

Increase in general property tax for 1920 shall not exceed by more than ten per cent tax for 1919.

hundred and twenty than was levied and collected in the year one thousand nine hundred and nineteen in the State, and in all counties, cities, towns and special tax districts in the State. The rates so levied in one thousand nine hundred and twenty shall in all cases become the maximum rates that can be levied by the counties, cities, towns and special tax districts in any year thereafter until authority is given by the General Assembly to increase them: Provided, that fractions of cents may be disregarded in fixing the final modified rate of tax by the State, counties, municipalities and all other tax districts.

Rates levied in 1920 became maximum until increased by General Assembly.

Proviso: fractions of cents may be disregarded.

Sec. 4. *How property shall be valued.*

All property, real, personal and mixed shall be valued from best information obtainable according to its true value in money; that is to say at the price for which such property would sell for cash if voluntarily offered for sale by the owner thereof, and not at the price which might be realized if such property were sold at forced sale. In determining the value, the assessor shall consider as to each piece of property its advantage of location, buildings or other improvements, quality of soil, quantity of standing timber, water privileges, water-power, mines, minerals, quarries, or other valuable deposits known to be available therein, and their value.

Property to be valued according to worth in money.

Assessor to take into consideration location and natural resources.

Sec. 5. *Depreciation or appreciation.*

Depreciation to be considered, also appreciation from any factor.

In estimating the depreciation of any building, structure, machinery, or other class of property subject to depreciation, the appraiser shall also take into consideration any appreciation by reason of surroundings, increased cost of material and labor, and any other factors which would tend to increase or decrease the value of any such property. In considering the increased cost of material and labor these factors shall be considered upon the basis of such increase as may be deemed to be normal, or stable, and not such temporary increase as obtained during, or immediately on account of, war conditions, and in estimating the real value of land, it shall be with reference to the normal or stable value and not with reference to the temporarily inflated values, but in all cases the appraiser shall determine what is the actual fair market value of the property.

Appreciation from material or labor costs not to be computed on basis of war prices.

Normal or stable value basis of estimate on land.

Sec. 6. *Time when assessments shall be made.*

Real property valued as of May 1, 1919, and such valuations hold for 1920, 1921, 1922, and 1923.

All real property shall be valued as of the first day of May, one thousand nine hundred and nineteen, and when such valuation has been completed it shall become the value to be used for all tax purposes for the years one thousand nine hundred and twenty, one thousand nine hundred and twenty-one, one thousand nine hundred and twenty-two and one thousand nine hundred and twenty-three. All personal

property shall be listed as of the first day of January in each year, and from and after the completion of the revaluation herein provided for all real property shall be listed as of January first of each year, and any revaluation on account of structures erected or destroyed shall be made as of that date.

Personal property listed as of January 1 of each year.

EXTRACTS FROM CHAPTER 92, PUBLIC LAWS OF NORTH CAROLINA, SESSION 1919.

An Act to Amend Chapter 231, Public Laws of 1917, in Relation to the Assessment of Property and the Collection of Taxes.

Sec. 8. The State Board of Tax Commissioners shall constitute a State Board of Equalization of valuations and taxes for the State. In case it shall appear or be made to appear to said board that any tax list in any county in the State is grossly irregular, unlawfully or unequally assessed, it shall be the duty of said board to equalize the valuations of real property among the several counties in the following manner:

Board to constitute State Board of Equalization. Grossly irregular lists corrected.

Sec. 61. *Railroads.*

The Commissioners selected from time to time under authority to establish the North Carolina State Tax Commission shall constitute a board of appraisers and assessors for railroad, canal, and steamboat companies and other companies exercising the right of eminent domain.

Assessment of railroad, canal, steamboat and other companies.

Reports of railroad, telegraph, telephone and other companies.

The president, secretary, superintendent, or other principal accounting officer within this State, of every railroad, telegraph, telephone, street railway company, whether incorporated by the laws of this State or not, shall, at such date as real estate is required to be assessed for taxation, return to the said Commission for assessment and taxation, verified by the oath or affirmation of the officer making the return, all the following described property belonging to such corporation within this State, viz:

Property to be returned.

The number of miles of such railroad lines in each county in this State and the total number of miles in this State, including the roadbed, right of way and superstructures thereon, main and sidetracks, depot buildings and depot grounds, section and tool houses, and the land upon which situated and necessary to their use; water stations and land, coal chutes and land, and real estate and personal property of every character necessary for the construction and successful operation of such railroad or used in the daily operation, whether situated on the charter right of way of the railroad or on additional land acquired for this purpose, except as provided below, including, also, if desired by the State Tax Commission, Pullman or sleeping cars or refrigerator cars owned by them or operated over their lines: Provided, however, that all machine and repair shops, general office buildings, storehouses and contents located outside of the right of way, and

Proviso: property listed for local taxation where situate.

also real and personal property, other than the property as returned above to the State Tax Commission, shall be listed for purposes of taxation by the principal officers or agents of such companies with the list takers of the county where the real and personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property. A list of such property shall be filed by such company with the State Tax Commission. It shall be the duty of the register of deeds, if requested so to do by the State Tax Commission, to certify and send to the said Commission a statement giving a description of the property mentioned in the foregoing proviso, and showing the assessed valuation thereof, which value shall be deducted from the total value of the property of such railroad company as arrived at by the Commission, in accordance with section sixty-six, before the apportionment is made to the counties and municipalities. The registers of deeds shall also certify to the Commission the local rate of taxation for county purposes as soon as the same shall be determined, and such other information obtained in the course of the performance of the duties of their office as the said Commission shall require of them; and the mayor of each city or town shall cause to be sent to the said Commission the local rate of taxation for municipal purposes.

List of property to be filed with State Tax Commission.

Certificate from register of deeds to Tax Commission.

Registers of deeds to certify local tax rate.

Mayor to send local tax rate.

Sec. 62a. *Railroad companies required to file maps, etc.*

Railroad company required to file map.

Every railroad company operating in this State shall be required to file with the State Tax Commission a map or blue print showing the location within the corporate limits of every incorporated city or town of its main line of road, and its length, together with location of its right of way, not exceeding one hundred feet in width, and the location and value of all real estate owned by any such company within the limits of any such city or town, and not included in the right of way so designated.

Location and value of real estate.

Every such company shall also report the value of any and all buildings and structures within the limits of any such city or town, whether on or off its right of way, and the commission shall find the value of all such real estate, buildings and structures and shall certify to such city or town the value of same, in addition to the value per mile of so much of its main line as may be located within such city or town, for ad valorem taxation.

Commission to certify property in city or town.

Sec. 63. *Railroads.*

Rolling stock defined.

The movable property belonging to a railroad company shall be denominated for the purpose of taxation "rolling stock." Every person, company, or corporation owning, constructing, or operating a railroad in this State shall, in the month of May, annually return a list or schedule to the State Tax Commission, which shall con-

Rolling stock to be returned.

tain a correct detailed inventory of all the rolling stock belonging to such company, and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping cars and dining cars, express cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars, and all other kinds of cars, and the value thereof, and a statement or schedule, as follows: (1) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (2) the amount of capital stock paid up; (3) the market value, or, if no market value, then the actual value of shares of stock; (4) the length of line operated in each county and total in the State; (5) the total assessed value of all tangible property in the State; (6) and, if desired, all the information heretofore required to be annually reported by section five thousand two hundred and ninety-one of the Revisal. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Commission, and with reference to amounts and value on the first day of May of the year of which the return is made.

Items of inventory.

Statement or schedule.

Instructions and forms.

Sec. 64. *Tangible and intangible property assessed separately.*

(a) At such dates as real estate is required to be assessed for taxation, the said Commission shall first determine the value of the tangible property of each division or branch of such railroad, or rolling stock

Valuation of tangible property.

Considerations determining value.

and all other physical or tangible property. This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property.

Value for franchise.

(b) They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds or any other securities, the value of which is based upon the earning capacity of the property.

Value of taxation.

(c) The aggregate value of the physical or tangible property and the franchise, as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certifiy, on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city or town; and the said Commission shall make and forward a like certificate to the Auditor of the State. All taxes due the State from any

Apportionment to counties.

Certificate to county.

Certificate to State Auditor.

Taxes payable direct to State Treasurer.

railroad company shall be paid by the treasurer of each company directly to the State Treasurer within thirty days after the first day of July of each year; and upon failure to pay the State Treasurer as aforesaid, he shall institute an action to enforce the same in the county of Wake or any other county in which such railroad is located, adding thereto twenty-five per centum of the tax. The board of county commissioners of each county through which said railroad passes shall assess against the same only the tax imposed for county purposes.

Action to enforce payment.

Penalty.

Assessment by counties.

Sec. 65. *Railroads.*

When any railroad has part of its road in this State and part thereof in any other State, the said Commission shall ascertain the value of railroad track, rolling stock, and all other property liable to assessment by the State Tax Commission of such company as provided in the next preceding section, and divide it in the proportion to the length such main line of road in this State bears to the whole length of such main line of road, and determine the value in this State accordingly: Provided, the Commission shall in valuing the fixed property in this State give due consideration to the character of road-bed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State

Proportionate assessment of railroad partly out of State.

Proviso: consideration of character of property or other factors.

than the average value for the entire system. On or after the first Monday in July the said Commission shall give a hearing to all the companies interested touching the valuation and assessment of their property. The said Commission may, if they see fit, require all argument and communications to be presented in writing.

Hearing to companies.

Sec. 98. *Taxes on railroads shall be a lien on property of the same.*

Lien for taxes on railroad property perpetual and paramount.

The taxes upon any and all railroads in this State, including road-bed, right of way, depots, sidetracks, ties and rails, now constructed or hereafter to be constructed, are hereby made a perpetual lien thereupon, commencing from the first day of May in each current year, against all claims or demands whatsoever of all persons or bodies corporate except the United States and this State; and the above described property or any part thereof may be taken and held for payment of all taxes assessed against said railroad company in the several counties of this State.

(Chapter 1, Public Laws, Extra Session, 1920)

EXTRACTS FROM AN ACT TO REVISE AND LIMIT TAX RATES FOR THE YEAR 1920 IN COMPLIANCE WITH PROVISIONS OF THE REVALUATION ACT; TO PROVIDE ADDITIONAL REVENUE FOR THE STATE FROM FRANCHISE AND LICENSE TAXES, AND FOR OTHER PURPOSES.

The General Assembly of North Carolina do enact:

Section 1. That the assessment or valuation of property made under the provisions of chapter eighty-four of the Pub-

lic Laws of one thousand nine hundred and nineteen is hereby approved by the General Assembly and adopted as the basis for the levy of tax rates by the State and by all subdivisions of the State for which taxes are levied for the year one thousand nine hundred and twenty, and the valuation of real property so fixed shall be adopted for the years one thousand nine hundred and twenty-one, one thousand nine hundred and twenty-two, and one thousand nine hundred and twenty-three, except as such valuations may be hereafter changed according to law.

Sec. 2. That section two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen entitled "An Act to Raise Revenue" be repealed and the following substituted for section two of that act:

"Section 2. Poll and property tax.

"That no tax on property or polls shall be levied for the year one thousand nine hundred and twenty for the use of the State or for the State pension fund. There shall be levied and collected for the year one thousand nine hundred and twenty for the benefit of the State public school fund an ad valorem tax of thirteen cents on every one hundred dollars value of real and personal property in this State required to be listed by the revenue laws of the State and on each taxable poll or male between the age of twenty-one and fifty years, except the poor or infirm whom the county commissioners may declare and record fit subjects for exemption, there shall be levied and collected for the year one thousand nine hundred and twenty a tax of thirty-nine cents."

Sec. 3. That section three of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be repealed and designated as "obsolete."

Sec. 4. That the taxes levied in the foregoing section two shall be collected and paid into the State Treasury for the benefit of the public school fund in the manner provided by law for the collection and settlement of State taxes.

Sec. 5. That at any regular or called meeting of the boards

of county commissioners of the several counties of the State, or governing authorities of the municipalities of the State, or of any other body in which there is vested authority to levy tax rates, held after the ratification of this act, rates of tax for the year one thousand nine hundred and twenty may be levied under existing authority of law upon the following basis and subject to the following limitations:

There shall first be ascertained the taxable value upon which the tax rates were levied for such county, municipality or special tax district for the year one thousand nine hundred and nineteen, and the total amount of revenue produced by the rate of tax so levied in the year one thousand hundred and nineteen. An addition of ten per cent may be made to such total amount of revenue for such county, municipality or special tax district for the year one thousand nine hundred and nineteen, and the total amount of revenue thus ascertained shall be the maximum limit for which rates may be levied in the year one thousand nine hundred and twenty; that is to say that such rate may be calculated with relation to the total amount of taxable property listed for each such county, municipality or special tax district as will yield in revenue for the year one thousand nine hundred and twenty an amount not exceeding the revenue for the year one thousand nine hundred and nineteen plus ten per cent as ascertained in the manner herein provided. Any rate of tax levied by any tax levying authority of any county, municipality or special tax district for the year one thousand nine hundred and twenty in excess of the rate herein authorized shall be held to be an illegal rate of tax in so far as such levy may be in excess of the amount of levy herein authorized: Provided, fractions of cents may be disregarded in making such tax levy. * * *

Sec. 7. That for the purpose of providing additional revenue for the State in lieu of ad valorem tax on property heretofore levied by the State, the following taxes shall be levied

and collected in the manner now provided by law for collection of similar taxes:

Sec. 7a. Franchise tax on corporations.

That the franchise tax provided in section eighty-two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be amended by striking out section eighty-two (3) and of section eighty-two (8) the words "one twenty-fifth of one per cent" where they appear in said sections, and substituting in lieu thereof the words "one-tenth of one per cent," and by striking out of line twelve of section eighty-two (3) and line ten of section eighty-two (8) the word "five" and inserting in lieu thereof the word "ten."

Sec. 7b. That where a report required to be made by section eighty-two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen to the State Tax Commission by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year one thousand nine hundred and twenty, or the report of any foreign corporation shows the proportion of the capital stock of that foreign corporation apportionable to this State under the rules laid down in section eighty-two of the Revenue Act to be less than half of the assessed value for taxation of all the property of such company in this State for the year one thousand nine hundred and twenty, the measure of the extent to which the corporate franchise of any such corporation is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation for the year one thousand nine hundred and twenty in this State. * * *

Sec. 7d. Privilege or franchise tax on railroads.

That section seventy-seven and seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be repealed and that section eighty-two (9) of chapter ninety of the Public Laws of one thousand nine hundred

and nineteen be amended by striking out of the third of the said subsection the word "railroad," that section eighty-two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be amended by inserting a new subsection to be designated as section eighty-two (6½) as follows:

"Section 82(6½). Railroads. Every railroad company doing business in this State shall on or before the first day of October, one thousand nine hundred and twenty, and on or before the thirtieth day of July annually thereafter, make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one (0.1%) per cent of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for on or before the first day of October, one thousand nine hundred and twenty, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city or town shall be allowed to collect any

taxes under this section. The tax imposed by this section shall be in addition to the tax imposed by section seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen, prior to the ratification of this act, only in so far as the tax imposed by this section seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen, and if the tax imposed by section seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen for the year one thousand nine hundred and twenty have been paid by any railroad company such amount so paid shall be credited on the tax imposed by this section."

EXTRACTS FROM MACHINERY ACT OF NORTH CAROLINA:

Ch. 38, Public Laws 1921.

(Ratified March 8, 1921)

Sec. 28(a). *County boards to review valuation of real estate.*

County board of review.

The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen (any vacancy which may have occurred to be filled by appointment of the board of county commissioners), shall meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of real property as heretofore appraised and assessed in the

Day of meeting.

county as a whole is in excess of the fair value of such property at the time of meeting of such board. The chairman of the board of county commissioners shall be the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be secretary of the said board. The said board shall make proper inquiry and investigation into the existing values of real property as compared with the assessed and appraised values thereof in the several cities, towns, and townships of the county; and if it shall find that the assessed value of such property is in excess of the actual value, it shall find the average percentage of such excess in the county as a whole, or in the several cities, towns, and townships, and shall report its finding so made to the State Tax Commission not later than the twentieth day of April, one thousand nine hundred and twenty-one. The values so reported shall be the values at which the property shall be assessed for taxation, unless and until the same have been changed and revised by the State Tax Commission and certified to the board of county commissioners of such county, which shall be done not later than the first day of July, one thousand nine hundred and twenty-one.

Organization of boards.

Inquiry and investigations as to values.

Findings.

Report to State Tax Commission.

Valuation.

Sec. 28(b). *Specific complaints.*

Specific complaints.

The board of county commissioners of the several counties shall have and exercise authority to hear and determine specific complaints of over-valuation or under-

valuation of any particular tracts of real property, and after the general equalization order provided for in the preceding subsection has been made, any person who owns property subject to taxation, and who finds that said property stands assessed for taxation, after such equalization order has been made, at an amount in excess of the actual value of such property on the first day of May, one thousand nine hundred and twenty-one, may have the right to have the same reassessed and reappraised by the said board, by filing with the clerk of the board of county commissioners, some time during the month of May, one thousand nine hundred and twenty-one, an application in form and substance as follows:

Application for reassessment.

Time for application.

To the Board of County Commissioners:

.....County.

Form of Application.

I hereby make application for the reassessment of the real property hereinafter described, for the reason that the said property is now assessed in excess of its actual value on the first day of May, one thousand nine hundred and twenty-one, and do hereby certify that in my best judgment the actual value of said property on that date was as it is stated herein to be:

Location .....

Condition .....

Acreage .....

Assessed value .....

Actual value May 1, 1921.....

.....

(Signature of Complainant.)

Complaint of under-valuation.

Review initiated by board.

Investigation of complaints.

Reports and recommendation.

Action by county commissioners.

Report to State Tax Commission.

General revision of values.

Any citizen of the county may file complaint of the under-valuation of any real property in the county, or the board may of its own motion revise the valuation of any property that it finds to be valued at more or less than the actual value of such property on the first day of May, one thousand nine hundred and twenty-one.

The county board of commissioners may appoint the county auditor or any resident freeholder of the county, who has general knowledge of the value of the real property of the county, to investigate any and all complaints filed under the provisions of this section, and make report and recommendations to the said board as to the true value in money of such properties. The county board of commissioners shall thereupon approve or revise such recommendations, and shall, not later than the fifteenth day of July, one thousand nine hundred and twenty-one, make report to the State Tax Commission of the increases and reductions in the valuation of specific properties made under authority of this section.

Sec. 28(c). If the board of county commissioners of any county, at their regular monthly meeting on the first Monday in April, one thousand nine hundred and twenty-one, shall be of the opinion that the valuation of real estate in such county is so unequal as between the owners of real property in such county as to require a more general revision of assessments than is practicable to be made under the provisions of subsections (a) and (b) of this

section, or the value of real property as heretofore appraised in such county as a whole is in excess of the present actual value of such property, it may by resolution so find and order that such revision be made. In the event such order is made, it shall be in lieu of the remedies provided in subsections (a) and (b) of this section, and the board of county commissioners shall appoint a board of review, composed of three resident freeholders, who have general knowledge of the value of real estate in such county, and such board of review may appoint such number of assistants as in their judgment is necessary to complete such revision, not later than the first day of July, one thousand nine hundred and twenty-one. The said board shall take and subscribe to an oath to perform their duties according to the provisions of this act according to the best of their ability, and shall give notice by public advertisement that the board, or one of its members or assistants, will attend at least one day in each township, and as long as shall be necessary to hear evidence as to the true value of the real property therein, and of any property over-valued or under-valued; and the said board shall proceed as speedily as possible to hear and determine what the present true value thereof is, and to make such general review and revision of the assessed value of real property in such county as it finds is necessary to be made, to the end that the same may be fairly and equally assessed at its present actual

Order in lieu of other remedies.

Board of review.

Assistants to board of review.

Board to be sworn.

Advertisement.

Determination of value.

Abstracts to county commissioners.

value in money. A complete abstract of such revised assessment, by townships, giving average value per acre, and value of town lots, and the value as a whole, shall be made to the board of county commissioners of such county and to the State Tax Commission, not later than the fifteenth day of July, one thousand nine hundred and twenty-one, and shall be subject to the authority of the State Tax Commission as a State Board of Equalization, so as to preserve a proper equalized value of real property in the several counties. The board of county commissioners shall fix the expense that may be incurred under this section, such expense to be borne by the county.

Authority of State Tax Commission.

Expense of review.

Basis for assessment of taxes.

Sec. 28(d). The report of the board of county commissioners, made pursuant to section twenty-eight (b), and the abstracts as reported by the board of review, under section twenty-eight (c), shall be the basis for the assessment of taxes, unless and until the same are changed by the State Tax Commission on or before the first day of September, one thousand nine hundred and twenty-one, and the said State Tax Commission shall, on or before the first day of September, one thousand nine hundred and twenty-one, certify down to the board of county commissioners of the several counties its findings and conclusions upon said report and abstracts.

State Tax Commission to certify findings.

Access to questionnaires and records.

Sec. 28(e). In any proceedings under this act the county board of review or county board of commissioners, or any of

their representatives, shall have access to the questionnaires filed by the owners of real property in the county under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen, the tax rolls for the several townships and any other records pertaining thereto.

It shall be the duty of the State Tax Commission to exercise the authority of supervision herein imposed, to the end that, as nearly as may be, property of all classes in all counties of the State may be fairly and equally valued in accordance with the requirements of the Constitution and the provisions of this act, and if in any case in doubt as to whether changes in valuation in any county should be approved, it shall have the authority, and it shall be its duty, to make or cause to be made such investigation as it may deem necessary to determine the facts and reach a just conclusion.

State Tax Commission to exercise authority of supervision.

Investigation.

The words "actual value," as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at cash sale, when sold in such manner as such properties are usually sold.

"Actual value."

Sec. 28(f). Any taxpayer in any county may appeal, within thirty days, to the State Tax Commission from any finding by the board of county commissioners.

Appeal to State Tax Commission.

Sec. 28(g). Any taxpayer owning property assessed originally by the State Tax

Application for review by State Tax Commission.

147

Commission may make application to the State Tax Commission for a review of the assessment of its property in the same manner herein provided for complaint by property owners before the county boards, and the State Tax Commission may hear and determine such complaints.

Hearing and determination.

Sec. 61. Same as Sec. 61 of Chapter 92 of the Public Laws of North Carolina, Session 1919.

Sec. 62. Same as Section 62 of Chap. 92 of the Public Laws of North Carolina, Session 1919.

Sec. 62a. Same as Sec. 62a of Chapter 92 of the Public Laws of North Carolina, Session 1919.

Sec. 63. Same as Sec. 63 of Chapter 92 of the Public Laws of North Carolina, Session 1919.

Sec. 64. Same as Sec. 64 of Chapter 92 of the Public Laws of North Carolina, Session 1919, except the last sentence which is as follows: The board of county Commissioners of each county through which said railroad passes shall assess againt the same only the tax imposed for county, township, or other taxing district purposes, the same as is levied on other property in such county, township, or special taxing districts.

Sec. 65. Same as Sec. 65 of Chapter 92 of the Public Laws of North Carolina, Session 1919.

Sec. 98. Same as Sec. 98 of Chapter 62 of the Public Laws of North Carolina, Session 1919.

EXTRACTS FROM REVENUE ACT OF NORTH CAROLINA:

Ch. 34, Public Laws 1921.

(Ratified March 8, 1921)

Sec. 3. *State taxes.*

No tax on property for State.

No tax on any property in the State shall be levied for any of the uses of the State Government. The taxes hereinafter levied in this act are for the expenses of the State Government, the appropriations to its educational, charitable, and penal institutions, pensions for Confederate soldiers and widows, the interest on the debt of the State, an equalizing fund for public schools, and other specific appropriations made by law, and shall be collected and paid into the general fund of the State Treasurer.

Tax for State expenses.

Appropriations.

SCHEDULE C

Sec. 76. *Defining taxes embraced in this schedule.*

Defining taxes embraced in schedule.

The taxes embraced in this schedule shall be listed and paid as specially herein provided, and shall be for the privilege of carrying on the business or doing the act named; and, if a corporation, shall be tax for the continuance of its corporate rights and privileges given under its charter, if incorporated in this State; or by reason of any act of domestication, if incorporated in another State, and shall be subject to other regulations mentioned in section twenty-six under schedule B.

Sec. 77. *Privilege tax on chair and sleeping cars.*

Chair and sleeping car companies to report receipts.

Every company operating chair cars and sleeping cars on which extra fare is charged shall make report to the State Auditor on or before the first day of October for the year one thousand nine hundred and twenty, and on or before the thirtieth day of July annually thereafter of the gross receipts collected from passengers transported between points in this State for the preceding year ending the thirtieth of June, which shall be verified by the oath of the secretary and treasurer of such company, and the said State Auditor shall certify said amount to the State Treasurer.

Verification.

License tax.

The annual license tax for operating such chair and sleeping cars within the State shall be three per cent (3%) of the gross earnings for the previous year. The tax imposed by this section shall be paid to the State Treasurer at the time of making the report provided for herein. No county, city or town shall impose any tax under this section.

Tax paid to Treasurer.

Sec. 78. *Obsolete.*

Sec. 79. *Privilege tax on express companies.*

Returns of express companies.

That every express company doing business in this State shall, on or before the thirtieth day of July in each year, make and return to the Corporation Commission a statement of the total number of miles of railroad lines over which such express com-

pany operates in this State; the said Corporation Commission shall certify the same to the State Treasurer as a basis for assessment and collection of the tax levied in the following schedule:

Sec. 79a. *Rate of taxation.*

Sec. 80. *Telegraph companies.*

Sec. 81. *Telephone companies.*

Sec. 82. *Franchise tax on corporations.*

Domestic corporations. Between the first day of May and the first day of July, one thousand nine hundred and thirteen, and annually thereafter during the month of May, each corporation organized under the laws of this State shall make a report in writing to the State Tax Commissioner in such form as the Commission may prescribe.

Domestic corporations to report annually.

Sec. 82(1). Such report shall be signed and sworn to before an officer authorized to administer oaths, by the president, vice-president, secretary, or general manager of the corporation, and forwarded to the Commission.

Report to be verified.

Sec. 82(2). Such report shall contain—

Report to contain:

(a) The name of the corporation.

Name of corporation.

(b) The location of its principal office.

Principal office.

(c) The name of the president, secretary, treasurer, and members of the board of directors, with postoffice addresses of each.

Name and address of officers.

(d) The date of the annual election of officers.

Date of election.

(e) The amount of authorized capital

Amount of stock and par value of shares.

stock and the par value of each share.

Amount of stock subscribed, issued and outstanding, and paid up.

(f) The amount of capital stock subscribed, the amount of capital stock issued and outstanding, and the amount of capital stock paid up.

Nature and kind of business

Places of business.

(g) The nature and kind of business in which the corporation is engaged, and its place or places of business.

Changes since last report.

(h) The change or changes, if any, in the above particulars made since the last annual report.

Commission to determine subscribed or issued and outstanding stock.

Certificate to Auditor.

Sec. 82(3). Upon the filing of the report provided for in the last three preceding subsections, the Commission, after finding such report to be correct, shall, on or before the first Monday of August, determine the amount of the subscribed or issued and outstanding capital stock of each such corporation. On the first Monday in August, or as soon thereafter as practicable, the Commission shall certify the amount so determined by it to the Auditor of the State, who shall charge for collection on or about August fifteenth, as herein provided, from such corporation, a fee of one-tenth of one per cent upon its subscribed or issued and outstanding capital stock, which fee shall not be less than ten dollars in any case. Such fee shall be payable to the Treasurer of the State on or before the first day of the following October. No county, city, or town shall have the power to levy any franchise tax under this section.

Fee charged for collection.

Minimum of fee.

Fee payable to Treasurer.

No county, city, or town tax.

Sec. 82(3½). That where a report required to be made under the provisions of this section to the State Tax Commission by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which report is made, or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under the rules laid down in section 82 of this act to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which such report is made, the measure of the extent to which the corporate franchise of any such corporation is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation in this State.

Calculation of franchise tax when stock is less than one-half of value of property.

Sec. 82(4). *Foreign corporations.* Annually during the month of July, each foreign corporation doing business in this State, and owning or using a part or all of its capital or plant in this State, and subject to compliance with all other provisions of law, and in addition to all other statements, required by law, shall make a report in writing to the Commission in such form as the Commission may prescribe.

Reports from foreign corporations.

Sec. 82(5). Such report shall be signed

Verification of report.

and sworn to before an officer authorized to administer oaths, by the president, vice-president, secretary, superintendent, or managing agent in this State and forward to the Commission.

Report to contain:

Sec. 82(6). Such report shall contain—

Name and domicile of corporation.

(a) The name of the corporation and under the laws of what State or county organized.

Principal office.

(b) The location of its principal office.

Name and address of officers.

(c) The names of the president, secretary, treasurer, and members of the board of directors, with the postoffice address of each.

Date of election.

(d) The date of the annual election of officers.

Amount of capital and par value of shares.

(e) The amount of authorized capital stock, and the par value of each share.

Amount of stock subscribed, issued, and paid up.

(f) The amount of capital stock subscribed, the amount of capital stock issued, and the amount of capital stock paid up.

Nature of business and places of business.

(g) The nature and kind of business in which the company is engaged, and its place or places of business, both within and without the State.

Location of offices in this State and name and address of agent in charge.

(h) The name and location of its office or offices in this State, and the name and address of the officers or agents of the corporation in charge of its business in this State.

Value and location of property in this State and outside this State.

(i) The value of the property owned and used by the company in this State, where situated, and the value of the property owned and used out-

side of this State, and where situated.

(j) The volume of business done by the company in this State. **Volume of business in this State.**

(k) The volume of business done by the company outside of the State, and where the said business is done. **Volume of business outside of State.**

(l) The change or changes, if any, in the above particulars, made since the last annual report. **Changes since last report.**

Sec. 82(6½). *Railroads.* Every railroad company doing business in this State shall annually on or before the thirtieth day of July make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission and giving such information as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad **Railroad companies to report annually.** **Commission to certify values to Auditor.** **Basis of calculation.** **Rate of franchise tax.**

company for the privilege of exercising its franchise in this State shall be one-tenth of one per cent (0.1%) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city or town shall be allowed to collect any taxes under this section.

When due.

Approximation if company delinquent.

No county, city, or town tax.

Commission to assess and fix proportion.

Sec. 82(7). Upon the filing of the report provided for in subsections four, five and six, the commission, from the facts thus reported, and any other facts coming to its knowledge bearing upon the question, shall, on or before the first Monday in September, assess and fix the proportion of the subscribed or issued and outstanding capital stock of the company represented by its property or business in this State, and certify the same to the Auditor of the State on or before the first Monday in October.

Certificate to Auditor.

Auditor to charge for collection.

Sec. 82(8). On or before October fifteenth the Auditor of State shall charge for collection, as herein provided, annually from such company, in addition to the initial fees otherwise provided for by law, for the privilege of exercising its franchise in this State, a fee of one-tenth of one per

cent upon the proportion of the subscribed or issued and outstanding capital stock of the corporation represented by property owned and used for or business transacted in this State as found and certified by the State Tax Commission, which fee shall not be less than ten dollars in any case. Such fee shall be payable to the Treasurer of the State on or before the first day of the following December. No county, city or town shall have the power to levy any franchise tax under this section.

Minimum charge.

When fee payable.

No county, city, or town tax.

Sec. 82(9). That nothing in the nine preceding subsections of this act shall apply to banks, insurance companies, fraternal, beneficient associations, building and loan associations, express, telephone or telegraph companies, or other corporations, upon which a franchise tax may be levied in other sections of this act.

Companies elsewhere taxed.

Sec. 82(10). *General provisions.* Between the dates herein fixed for the determination of the amount of subscribed or issued and outstanding capital stock of a domestic corporation and the proportion of the authorized capital stock of a foreign corporation, represented by property owned and used or business transacted by it in this State, and the dates herein fixed for the certification to the Auditor of State of such amount or proportion, the commission may, on the application of any person or company interested, or on its own motion, review and correct its findings.

Correction of findings.

Sec. 82(11). Upon the payment of the tax or fee provided for in this act to the Treasurer of State, the Treasurer of State

Treasurer to give receipts.

shall make out and deliver to the public utility or corporation so paying a receipt for the payment by such public utility or corporation of the tax or fee herein provided for.

Lien for fees, taxes and penalties.

Sec. 82(12). The fees, taxes and penalties required to be paid by this act shall be the first and best lien on all property of the public utility or corporation, whether such property is employed by the public utility or corporation in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the creditors and stockholders thereof.

Penalty for failure or neglect to report.

Sec. 82(13). *Penalties.* If a public utility or corporation required to file a report by any provision of this act fails or neglects to make such report as required herein, it shall be subject to a penalty of ten dollars per day for each day's omission after the time limited in this act for making such report.

Sec. 82(14). Obsolete.

Collection of taxes, fees, and penalties, by sheriff.

Sec. 82(15). Such taxes and fees and penalties thereon may be certified by the State Auditor to the sheriff of the county in which any such company has its home office, or of any county in which any such company may own property, for collection as provided in section four of this act, and

Action for recovery.

if collection is not made in this way such taxes or fees and penalties thereon may be recovered by an action in the name of the State, which may be brought in the

Venue.

Superior Court of Wake County, or in any county in which such corporation has

an office or place of business, or in which such public utility is doing business, or the line of any street, suburban, or interurban railroad company or railroad company is located, and such Superior Court shall have jurisdiction of such action regardless of the amount involved therein. The Attorney-General, on request of the State Treasurer, shall institute such action in the Superior Court of Wake County, or of any such counties as the State Treasurer may direct. In any such action it shall be sufficient to allege that the tax fee or penalty sought to be recovered stands charged on the delinquent duplicate of the Treasurer of State, and that the same has been unpaid for a period of thirty days after having been placed thereon.

Jurisdiction.

Attorney-General to institute action.

Sufficient allegations.

Sec. 82(16). All foreign corporations, and the officers and agents thereof, doing business in this State, shall be subject to all the liabilities and restrictions that are or may be imposed upon corporations of like character, organized under the laws of this State, and shall have no other or greater powers. Every contract made by or on behalf of any such foreign corporation, affecting the liability thereof, or relating to its property within this State, before it shall have complied with the provisions of section eleven hundred and ninety-four of the Revisal of one thousand nine hundred and five, shall be wholly void on its behalf and on behalf of its assigns; but shall be enforceable against it or them. Nothing contained in this sub-

Foreign corporations subject to liabilities and restrictions as home companies.

Contracts by or on behalf of foreign corporations.

Corporations.

section shall be held or construed to apply to insurance corporations, fraternal, beneficiary associations, or building and loan associations banking, railroad, express, telephone, and telegraph companies.

Delinquency of corporations certified to Secretary of State.

Sec. 82(17). If a corporation, wherever organized, required by the provisions of this act to file any report or return or to pay any tax or fee, either as a public utility or as a corporation, organized under the laws of this State, or as a foreign corporation for profit doing business in this State and owning and using a part or all of its capital or plant in this State, or as a sleeping-car, freight line, or equipment company, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this act for making such report or return or for paying such tax or fee, the Commission shall certify such fact to the Secretary of State. The Secretary of State, shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this State by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of any such foreign corporation to do business in this State, by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporations by such articles of incorporation or by such certificate of authority shall cease and determine. The Secretary of State shall immediately notify such domestic or foreign corporations of the action taken by him.

Action by Secretary of State as to home companies.

As to foreign corporations.

Effect of action.

Secretary of State to notify corporations of action.

Sec. 82(18). Any person or persons who shall exercise, or attempt to exercise any powers, privileges, or franchises under the articles of incorporation or certificate of authority, after the same are canceled, as provided in any section of this act, shall be fined not less than one hundred dollars nor more than one thousand dollars.

Penalty for exercising corporate powers after action by Secretary of State.

* * * * *

Sec. 82(20). In addition to all other remedies for the collection of any taxes or fees due, under the provisions of this act, the Attorney General shall, upon request of the State Treasurer, whenever any taxes, fees, or penalties due under this act from any public utility or corporation shall have remained unpaid for a period of ninety days, or whenever any corporation or public utility has failed or neglected for ninety days to make or file any report or return required by this act, or to pay any penalty for failure to make or file such report or return, apply to the Superior Court of Wake County, or of any county in the State in which such public utility or corporation is located or has an office or place of business, for an injunction to restrain such public utility or corporation from the transaction of any business within this State until the payment of such taxes or fees and penalties thereon, or the making and filing of such report or return and payment of penalties for failure to make or file such report or return, and the cost of such application, which shall be fixed by the Court. * * *

An Act to Transfer the Powers and Duties of the State Tax Commission to the State Department of Revenue.

Chap. 40, Public Laws 1921.

(Ratified March 8, 1921)

The General Assembly of North Carolina do enact:

Date for transfer.

Section 1. From and after the first day of May, one thousand nine hundred and twenty-one, all the powers and duties imposed by any act of law, including Revenue and Machinery Acts, exacted by the present session of the General Assembly, upon the State Tax Commission, shall be transferred to and imposed upon a department to be known as the State Department of Revenue, created by this act, to be administered by the Commissioner of Revenue, to be appointed as provided in this act. All such powers and duties, except as otherwise provided herein, shall devolve upon the Commissioner of Revenue, and wherever in the revenue laws of the State the words "State Tax Commission" are used such words shall, after May first, one thousand nine hundred and twenty-one, be held to mean Commissioner of Revenue, except as otherwise provided in this act.

Transfer of powers and duties.

State Department of Revenue.

Commissioner of Revenue.

Office created.

Sec. 2. There is hereby created the office of Commissioner of Revenue, to be appointed by the Governor, by and with the advice and consent of the Senate, and if such appointment is made when the Senate is not in session, confirmation may be by the Senate at the next session. The term of office shall be for four years from

Appointment.

Term of office.

and after the first day of May, one thousand nine hundred and twenty-one, and the succeeding commissioner of revenue shall be nominated and elected in the year one thousand nine hundred and twenty-four, in the manner provided for the nomination and election of other State officers, and quadrennially thereafter.

Election of successor.

Sec. 3. The powers and duties now exercised by the State Tax Commission as a State Board of Equalization, and the appellate authority exercised by the said State Tax Commission in determining appeals from valuations made by assessing officers in the several counties of the State, shall, from and after the first day of May, one thousand nine hundred and twenty-one, be held and exercised by a State Board of Equalization, composed of the Commissioner of Revenue, the chairman of the Corporation Commission, and the Attorney-General, who shall be ex officio member of and constitute the State Board of Equalization, to have and exercise the powers and duties now imposed by law upon the State Tax Commission as a State Board of Equalization, and as an appellate court, to hear and determine appeals from valuation of property by assessing officers in the several counties. The said board shall meet upon call of the Commissioner of Revenue as often as may be necessary to discharge the duties imposed by law upon the said board.

Powers and duties as of State Tax Commission.

Appellate authority.

State Board of Equalization.

Ex officio members.

Metings of board.

An Act to Refund Taxes Illegally Collected and Paid Into the State Treasury.

(Chapter 96, Laws of North Carolina, Extra Session 1921)

The General Assembly of North Carolina do enact:

Auditor to issue warrant.

Section 1. Whenever taxes of any kind are or have been through clerical error, or misinterpretation of the law, or otherwise, collected and paid into the State Treasury in excess of the amount legally due the State, the State Auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certificate of the head of the department through which said taxes were collected or his successor in the performance of the functions of that department, with the approval of the Attorney-General, and the Treasurer shall pay the same out of any funds in the treasury not otherwise appropriated: Provided, demand is made for the correction of such error or errors within two years from the time of such payment. Provided further, that claims which have arisen within the five years next preceding the ratification of this act shall be presented and made within two years from the ratification of this act.

Certificate of collection.

Approval of Attorney-General.

Proviso: time for demand.

Proviso. time for demand on existing claims.

Sec. 2. This act shall be in force and effect from and after its ratification.

Ratified this the 19th day of December, A. D. 1921.

An Act to Amend Chapter 34 of the Public Laws of 1921, Being an Act to Raise Revenue, Relative to Privilege Tax and to Income Tax on Railroads.

(Chapter 102, Laws of North Carolina, Extra Session 1921)

The General Assembly of North Carolina do enact:

Amendment to be section 78 of law.

Section 1. That chapter thirty-four, Public Laws of one thousand nine hundred and twenty-one, section seventy-eight, be and the same is hereby amended by striking out the word "obsolete" and by inserting the amended section hereinafter set forth in section two of this act.

Section amended and transposed.

Sec. 2. That chapter thirty-four, Public Laws of one thousand nine hundred and twenty-one, section eighty-two, subsection six and one-half (6½), be and the same is hereby amended so as to read as hereinafter set forth in this section, and as so amended the said subsection six and one-half be and it is hereby transposed from the said section eighty-two to section seventy-eight of the said chapter, to stand as section seventy-eight of the said chapter, and to read as follows, to-wit:

Privilege tax on railroads.

PRIVILEGE TAX ON RAILROADS.

Reports required.

Every railroad company doing business in this State shall annually, on or before the thirtieth day of July, make and return to the Commissioner of Revenue, in such form and upon such blanks as shall be required and furnished by him, and giving such information as he shall require for the purpose of carrying out the provisions of this section, a report upon which the

Ascertainment and certificate of value.

Commissioner of Revenue shall ascertain and certify to the State Auditor the value upon which the amount of tax to be paid by any such railroad as a license or privilege tax shall be calculated. The value upon which such calculation shall be made by the State Auditor, and the measure of the extent to which every such railroad company is carrying on intrastate commerce within the State of North Carolina, shall be the value of the total property, tangible and intangible, in this State, of each such railroad company as assessed for ad valorem taxation for the year in which such report is made. The tax which every railroad company shall pay for the privilege of carrying on intrastate commerce within this State shall be one-tenth of one per cent of the value so ascertained and certified by the Commissioner of Revenue, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for it shall be the duty of the Commissioner of Revenue to make an approximation from the reports and records on file in the State Department of Revenue of the value upon which the amount of tax due by the said company under this section shall be calculated, and to certify the said value to the State Auditor. Upon that value the State Auditor shall then calculate the amount of the said tax, as hereinbefore provided, and shall certify the same to the State Treasurer for collection. No county, city, or town shall be allowed to

Basis of valuation.

Rate of tax.

When tax payable.

Ascertainment of value on failure to report.

Calculation.

Municipalities not allowed to colect tax.

collect any taxes under this section: Provided, that it is the intention of this section to levy upon railroads a license or privilege tax for the privilege of engaging in intrastate commerce carried on wholly within the State of North Carolina and not a part of interstate or foreign commerce; that the tax provided for in this section is not intended to be a tax on the privilege of engaging in interstate commerce, nor is it intended to be a tax on the business of interstate commerce, nor is it intended to be a tax having any relation to the interstate or foreign business or commerce in which any such railroad company may be engaged in addition to its business in this State.

Proviso: tax limited to intrastate privilege.

Interstate commerce exempt.

Sec. 3. That chapter thirty-four, Public Laws of one thousand nine hundred and twenty-one, section eighty-two, subsection nine (9), be and the same is hereby amended by inserting the word "railroads" in line two thereof between the words "to" and "banks."

Railroads elsewhere taxed.

Ratified this the 19th day of December, A. D. 1921.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

THE NORTH CAROLINA RAILROAD TAX CASES.

No. 368.

THE SOUTHERN RAILWAY COMPANY, APPELLANT,
vs.
A. D. WATTS, AS COMMISSIONER OF REVENUE OF NORTH CAROLINA, AND OTHERS.

No. 369.

ATLANTIC & YADKIN RAILWAY COMPANY, APPELLANT,
vs.
A. D. WATTS, AS COMMISSIONER OF REVENUE OF NORTH CAROLINA, AND OTHERS.

No. 381.

SEABOARD AIR LINE RAILWAY COMPANY, APPELLANT,
vs.
A. D. WATTS, AS COMMISSIONER OF REVENUE OF NORTH CAROLINA, AND OTHERS.

No. 382.

ATLANTIC COAST LINE RAILROAD COMPANY, APPELLANT,
vs.
A. D. WATTS, AS COMMISSIONER OF REVENUE OF NORTH CAROLINA, AND OTHERS.

No. 383.

NORFOLK SOUTHERN RAILROAD COMPANY, APPELLANT,
vs.
A. D. WATTS, AS COMMISSIONER OF REVENUE OF NORTH CAROLINA, AND OTHERS.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA AND FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

BRIEF ON BEHALF OF THE APPELLEES.

JAMES S. MANNING,
Attorney General of North Carolina;
FRANK NASH,
Assistant Attorney General of North Carolina,
Solicitors for the Appellees.

WM. P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel for the Appellees.

INDEX.

	Page.
Statement	1
Summary of the questions involved	4
Argument	5
Part I. The ad valorem assessments and taxes	5
I. Brief history of recent legislation and administration as to property taxation in North Carolina	5
1. The general system	5
2. Distribution of avails of property taxes	7
3. The revaluation of 1919-1920	10
4. Depression and reduction in 1921	14
II. Summary of facts respecting assessments of properties of the appellants	17
III. Differences between the bills of complaint	25
IV. Plaintiffs have made no showing of illegality as to method	29
1. Contentions of plaintiffs as to method	29
2. Tax commission in 1920 and commissioner of revenue in 1921 made no assessments	32
3. The allegations that assessments are illegal as violating statutory method are without merit	36
V. Plaintiffs have no standing to attack their assessments because none of them alleges invalidity of act of 1920 which approved the assessments and gave them effect	40
VI. Plaintiffs have made out no case under either State or Federal Constitutions on their allegations of excessiveness	41
1. No allegations in complaints to raise any question of unconstitutionality for excessiveness	42
2. Nothing in suits to raise any question of constitutionality under Fourteenth Amendment	49
3. The assessments are not a burden on interstate commerce	58

Page.

VII. Plaintiffs have made out no case of unconstitutionality for discrimination..... 87
1. Contentions of plaintiffs as to discrimination 87
2. There are no allegations in the complaints sufficient to raise any constitutional question of discrimination..... 92
3. There has been no discrimination in fact or in law..... 96
VIII. Plaintiffs' contention that the general system of taxation is in violation of the constitution of North Carolina is without merit..... 112
IX. The Norfolk Southern is fixed with consent to its assessment and cannot be heard to complain of it in equity..... 119
X. Summary of contentions of defendants as to ad valorem assessments and taxes..... 125
Part II. The franchise or privilege tax..... 126
I. Contentions of parties and question raised as to the franchise or privilege tax..... 126
II. History of franchise or privilege taxation of railroads in North Carolina..... 128
III. Power of State to impose franchise or privilege taxes on interstate railroads..... 130
1. General power to impose franchise, privilege, license or excise taxes..... 130
2. Franchise or privilege taxes on interstate railroads which are valid..... 133
3. Those beyond the power of a State and invalid 147
IV. The North Carolina franchise or privilege tax on railroads is within the power of the State and valid 151
1. It is not a property tax, but a privilege tax 151
2. Even if it were a property tax it would not follow that it is invalid..... 158
3. It is not a tax for the privilege of engaging in interstate commerce..... 161
4. Its payment is not a condition precedent to right to engage in interstate commerce 167

Page.

5. It is a valid tax on the privilege of engaging in intrastate commerce within North Carolina 169
6. There is no merit in the contention that it violates the constitution of North Carolina because its avails go to the support of the State government..... 171
7. North Carolina does not compel the plaintiffs to engage in intrastate commerce and therefore has the right to tax the privilege of so doing..... 171

V. There is no merit in the contention that the franchise or privilege tax should be calculated according to revenue act, section 82 (3½)..... 175

Conclusion 181

LIST OF CASES AND AUTHORITIES.

Adams Express Co. v. Kentucky, 166 U. S., 171..... 65
Adams Express Co. v. Ohio, 165 U. S., 229..... 44, 45, 46, 55, 63, 64, 65, 70, 86, 93, 96, 114, 131
Adams Express Co. v. Ohio, 166 U. S., 218..... 63, 65
Albertson v. Wallace, 81 N. C., 479..... 98
Allen v. Pullman Co., 191 U. S., 171..... 134, 137, 150
Allen v. Williams, 2 N. C., 17..... 51
American Ref. Co. v. Hall, 174 U. S., 70..... 70
Armour Packing Co. v. Lacy, 200 U. S., 226..... 98, 158, 165
Atlantic Telegraph Co. v. Philadelphia, 190 U. S., 160..... 69, 71, 132
Baltic Mining Co. v. Massachusetts, 231 U. S., 68.... 134, 138, 153, 154
Bank v. Taylor, 6 N. C., 266..... 182
Bell Gap R. Co. v. Pennsylvania, 134 U. S., 232..... 99, 101
Belo v. Commissioners, 82 N. C., 415..... 159, 160
Billings v. United States, 232 U. S., 261..... 96
Bonitz v. Board, 154 N. C., 375..... 183
Brooklyn Street Ry. Co. v. New York, 199 U. S., 48.. 45, 50, 53, 76, 132
Brooks v. Morgan, 27 N. C., 481..... 51
Brushaber v. Union Pac. R. R. Co., 240 U. S., 1..... 153
California v. Pacific Railroad Co., 127 U. S., 1..... 131
Cass Farm Co. v. Detroit, 181 U. S., 396..... 55
Charlotte, etc., R. Co. v. Gibbs, 142 U. S., 386..... 65
Chicago, etc., R. Co. v. Babcock, 204 U. S., 585..... 43, 46, 93
Cincinnati, etc., R. Co. v. Kentucky, 115 U. S., 321..... 99
Clark v. Titusville, 184 U. S., 329..... 101, 153, 156

Page.

Cleveland, etc., R. Co. v. Backus, 154 U. S., 439..... 63, 65
Cobb v. Commissioners, 122 N. C., 307..... 98
Coe v. Errol, 116 U. S., 517..... 159
Coit, etc., v. Sutton, 102 Mich., 324..... 158
Collins v. Haughton, 26 N. C., 420..... 51
Columbus Southern Ry. v. Wright, 151 U. S., 470..... 55, 65, 69
Commissioners v. Tobacco Co., 116 N. C., 441..... 159, 160
Coulter v. Louisville, etc., R. Co., 196 U. S., 599.... 93, 94, 110, 113, 184
Covington v. Rockingham, 93 N. C., 134..... 44
Cream of Wheat Co. v. Grand Forks, 253 U. S., 325..... 159
Crutcher v. Kentucky, 141 U. S., 47..... 134
Cudahy Packing Co. v. Minnesota, 246 U. S., 450..... 70
Cummings v. Merchants Bank, 101 U. S., 160..... 99, 103
Dane v. Jackson, 256 U. S., 589..... 56, 185
Davidson v. New Orleans, 96 U. S., 97..... 53, 97, 159
Delaware Railroad Tax, 18 Wall., 206..... 55, 62, 64
Detroit v. Parker, 181 U. S., 399..... 55
Elliott on Railroads, 3d Ed., sec. 904..... 44
Erie Railroad v. Pennsylvania, 21 Wall., 492..... 55, 64
Fargo v. Hart, 193 U. S., 490..... 62, 65, 66
Fargo v. Michigan, 121 U. S., 230..... 148
Fidelity, etc., Trust Co. v. Louisville, 245 U. S., 54..... 159
Flint v. Stone Tracy Co., 220 U. S., 107..... 134
Ft. Smith Lumber Co. v. Arkansas, 251 U. S., 532..... 102, 160
French v. Barber Asphalt Co., 181 U. S., 324..... 55
Galveston, etc., R. Co. v. Texas, 210 U. S., 217..... 148, 149, 164
Glidden v. Harrington, 189 U. S., 259..... 55
Greene v. Louisville, etc., R. Co., 244 U. S., 499..... 49, 93
Green v. Owen, 125 N. C., 212..... 183
Gulf, etc., Railroad v. Ellis, 165 U. S., 150..... 101
Hamilton Co. v. Massachusetts, 6 Wall., 632..... 157
Harrison v. Styres, 74 N. C., 290..... 183
Head Money Cases, 112 U. S., 580..... 93
Henderson Bridge Co. v. Henderson, 173 U. S., 592..... 185
Hillsboro v. Smith, 110 N. C., 417..... 51, 52
Holton v. Board, 93 N. C., 430..... 182
Home Ins. Co. v. New York, 134 U. S., 594..... 99, 134
Horne Silver Mining Co. v. New York, 143 U. S., 305.. 70, 134, 138, 150
Illinois Central Co. v. Mississippi R. Comm., 229 Fed., 248..... 158
In re Hinson, 156 N. C., 250..... 51
International Paper Co. v. Massachusetts, 246 U. S., 141.... 134, 147, 148, 167
Jacobs v. Smallwood, 63 N. C., 112..... 182

Page.
Kansas City R. Co. v. Botkin, 240 U. S., 227..... 157
Kansas City R. Co. v. Kansas, 240 U. S., 227..... 153
Kansas City Co. v. Stiles, 242 U. S., 111..... 153, 156, 157
Keeney v. New York, 222 U. S., 525..... 101, 153, 154
Kentucky Railroad Tax Cases, 115 U. S., 321..... 54, 96
Kidd v. Alabama, 188 U. S., 730..... 159
King v. Portland City, 184 U. S., 69..... 55
King v. Wilmington, etc., R., 66 N. C., 277..... 183
Lacy v. Armour Packing Co., 134 N. S., 567..... 158, 165
Lane County v. Oregon, 7 Wall., 71..... 37
Leigh v. Green, 193 U. S., 88..... 55
Leloup v. Mobile, 127 U. S., 640..... 62, 147, 167
Looney v. Crane Co., 245 U. S., 178..... 148
Louisville, etc., R. Co. v. Coulter, 131 Fed., 282..... 93
Louisville & Nashville R. Co. v. Garrett, 231 U. S., 304..... 113
Lowry v. School Trustees, 140 N. C., 33..... 183
Ludwig v. Western Union, 216 U. S., 146..... 147, 167
Lusk v. Botkin, 240 U. S., 236..... 157
Luther v. Commissioners, 164 N. C., 241..... 183
Magoun v. Ill. Trust & Sav. Bank, 170 U. S., 293..... 44, 99, 101, 153
Maine v. Grand Trunk Ry. Co., 142 U. S., 217..... 65, 134, 140, 149, 163, 164
Maish v. Arizona, 164 U. S., 599..... 93
Mfg. Co. v. Commissioners Cabarrus Co., 183 N. C., 553..... 13
Marconi Co. v. Commonwealth, 218 Mass., 558..... 134
Marye v. B. & O. Railroad, 127 U. S., 117..... 62
Matthews v. Matthews, 26 N. C., 155..... 51
Meyers v. Wells Fargo Co., 223 U. S., 298..... 148
Michigan Central R. Co. v. Powers, 201 U. S., 245..... 54, 97, 103, 184
Minneapolis, etc., R. Co. v. Beckwith, 129 U. S., 26..... 99
Missouri Pacific R. Co. v. Mackey, 127 U. S., 205..... 99
Missouri v. Lewis, 101 U. S., 22..... 99
Mobile County v. Kimball, 102 U. S., 691..... 44
McCulloch v. Maryland, 4 Wheat., 316..... 37
McGwigen v. Wilmington, etc., R. Co., 95 N. C., 428..... 182
McMillan v. Anderson, 95 U. S., 37..... 54
Neal v. Roberts, 18 N. C., 81..... 182
New York State v. Barker, 179 U. S., 279..... 93
New York v. Roberts, 171 U. S., 658..... 134, 150
N. C. Railroad Co. v. Commissioners, 82 N. C., 260..... 182
Ohio Tax Cases, 232 U. S., 576..... 73, 132, 138, 147, 163, 166, 170

Page.

Osborne v. Florida, 164 U. S., 650..... 134, 136, 137, 147, 150, 166

Otis Co. v. Ludlow Mfg. Co., 201 U. S., 140..... 184
Pacific Express Co. v. Seibert, 142 U. S., 339..... 99, 101
Pennsylvania R. Co. v. Knight, 192 U. S., 21..... 134, 138
Phelps v. Chesson, 34 N. C., 194..... 182
Philadelphia Steamship Co. v. Pennsylvania, 122 U. S., 326..... 141, 148, 149

Pingee v. Auditor, 120 Mich., 95..... 158
Pittsburgh, etc., R. Co. v. Backus, 154 U. S., 421.....45, 63, 65, 66, 93
Pittsburgh, etc., R. Co. v. Board of Public Works, 172 U. S., 45 55
Postal Telegraph v. Adams, 155 U. S., 695..... 63
Provident Institution v. Massachusetts, 6 Wall., 611..... 153, 157
Pullman Co. v. Adams, 189 U. S., 420..... 134, 136, 137, 150, 171, 173

Pullman Co. v. Kansas, 216 U. S., 56..... 134, 148
Pullman Palace Car Co. v. Pennsylvania, 141 U. S., 18.... 65, 63, 64, 65, 70

Quong Wing v. Kirkendall, 223 U. S., 59..... 102
Railroad v. Greene, 244 U. S., 522..... 62
Railroad Co. v. Peniston, 18 Wall., 5..... 131
Ratterman v. Western Union, 127 U. S., 411..... 148
Reid v. Railroad, 149 N. C., 423..... 174
Republic Acceptance Corporation v. De Land, 275 Fed., 637 ..... 101, 132, 153, 155, 157
Ruling Case Law, Vol. 26, p. 35..... 158
St. Louis, etc., R. Co. v. Arkansas, 231 U. S., 350.... 134, 140, 142, 153, 158, 159, 163

St. Louis-San Francisco R. Co. v. Middlekamp, 256 U. S., 226 ..... 124, 132, 142, 144, 153
Security Mutual Co. v. Previtt, 202 U. S., 246..... 150
Shaffer v. Carter, 252 U. S., 37..... 37, 38, 159
Smith v. Cheek, 50 N. C., 213..... 51
Smith v. Wilkins, 164 N. C., 135..... 183
Society for Savings v. Coite, 6 Wall., 594..... 157
Southern Railway Co. v. Greene, 216 U. S., 400.. 101, 102, 150, 156, 170
Southern Railway v. Reid, 222 U. S., 424..... 174
S. S. White Co. v. Commonwealth, 212 Mass., 35..... 134, 138
State Railroad Tax Cases, 92 U. S., 610..... 46, 54, 55, 64, 69, 73, 96, 98

State v. ——, 2. N. C., 28..... 182
State v. Carter, 129 N. C., 560..... 98

Page.
State v. Cohen, 84 N. C., 771 98
State v. French, 109 N. C., 722 ..... 98, 158
State v. Green, 126 N. C., 1032 98
State v. Hunt, 129 N. C., 686 98
State v. Moore, 104 N. C., 714 183
State v. Poole, 74 N. C., 412 183
State v. Powell, 100 N. C., 525 98
State v. Roberson, 136 N. C., 587 98
State v. Tripp, 168 N. C., 150 ..... 50, 52
State v. Webb, 155 N. C., 426 51
State v. Wheeler, 141 N. C., 773 160
State v. Williams, 146 N. C., 618 183
Stephens v. Hicks, 156 N. C., 239 183
Sunday Lake Iron Co. v. Wakefield, 247 U. S., 350 ..... 93, 95, 124
Telegraph Co. v. Texas, 105 U. S., 460 62
Tennessee v. Whitworth, 117 U. S., 129 159
Thompson v. Floyd, 47 N. C., 313 51
Tonawanda v. Lyon, 181 U. S., 389 55
Trustees v. Foy, 5 N. C., 58 182
Turpin v. Lemon, 187 U. S., 58 55
Underwood Typewriter Co. v. Chamberlain, 254 U. S., 113 71
Union Pacific R. Co. v. Christensen, 275 Fed., 6 ..... 68, 93
Union Ref. Co. v. Lynch, 177 U. S., 149 70
Union Trust Co. v. Detroit Council, 170 Mich., 692 158
Union T. Co. v. Probate Judge, 125 Mich., 487 158
U. S. Glue Co. v. Oak Creek, 247 U. S., 321 71
United States v Swiger, 15 Wall., 111 134
Voight v. Detroit, 184 U. S., 122 55
Wallace v. Hines, 253 U. S., at 69 81
Western Union v. Alabama, 132 U. S., 472 148
Western Union v. Kansas, 216 U. S., 1 ..... 137, 147, 148, 156, 167, 172
Western Union v. Massachusetts, 125 U. S., 530 .... 62, 64, 65, 146, 149
Western Union v. Missouri, 190 U. S., 412 65
Western Union v. Pennsylvania, 128 U. S., 39 149
Western Union v. Taggert, 163 U. S., 1 ..... 45, 63, 66, 76, 86
Weyerhauser v. Minnesota, 176 U. S., 556 55
Whitford v. Board, 159 N. C., 160 183
Winona R. v. Minnesota, 159 U. S., 537 54
Wofford Oil Co. v. Smith, 263 Fed., 396 113
Worth v. Railroad, 89 N. C., 30 153

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

THE NORTH CAROLINA RAILROAD TAX CASES.

No. 368.

THE SOUTHERN RAILWAY COMPANY, APPELLANT,
vs.
A. D. WATTS, AS COMMISSIONER OF REVENUE OF NORTH CAROLINA, AND OTHERS.

No. 369.

ATLANTIC & YADKIN RAILWAY COMPANY, APPELLANT,
vs.
A. D. WATTS, AS COMMISSIONER OF REVENUE OF NORTH CAROLINA, AND OTHERS.

No. 381.

SEABOARD AIR LINE RAILWAY COMPANY, APPELLANT,
vs.
A. D. WATTS, AS COMMISSIONER OF REVENUE OF NORTH CAROLINA, AND OTHERS.

No. 382.

ATLANTIC COAST LINE RAILROAD COMPANY, APPELLANT,
vs.
A. D. WATTS, AS COMMISSIONER OF REVENUE OF NORTH CAROLINA, AND OTHERS.

No. 383.

NORFOLK SOUTHERN RAILROAD COMPANY, APPELLANT,
vs.
A. D. WATTS, AS COMMISSIONER OF REVENUE OF NORTH CAROLINA, AND OTHERS.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA AND FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

BRIEF ON BEHALF OF THE APPELLEES.

Statement.

These are bills brought by five of the principal railroads doing business in and through the State of North Carolina

to restrain the collection of the *ad valorem* property taxes for local purposes and the francise tax for State purposes, imposed for the year 1921 by the statutes of that State. The said taxes are imposed alike on all railroads doing business in North Carolina, domestic and foreign, those operating wholly within the State and those doing business both within and without the State. All of these classes of railroads are represented among the plaintiffs. The Southern, the Seaboard, and the Norfolk Southern are foreign corporations, engaged in the business of a carrier both within and without the State. The Atlantic Coast Line is a domestic corporation engaged in the business of a carrier both within and without the State. The Atlantic and Yadkin is a domestic corporation engaged in the business of a carrier entirely within the State.

As originally brought, these bills also attacked and sought to restrain the income tax of North Carolina as applicable to railroads, but the suits having been commenced in the district courts before income taxes had been levied against the plaintiffs, and upon intimation by the district courts that the question of the validity of the income taxes was not before them in these suits, all of the plaintiffs subject to income tax for 1921 brought separate suits in the respective district courts to restrain the collection of that tax, which suits are now pending. As heard below and as here presented, therefore, these suits involve only the validity of the *ad valorem* property taxes and the State franchise tax for 1921.

Under stipulations set out in the records the plaintiffs paid property taxes on respective valuations of their properties greatly less than the assessed valuations upon which

taxes were levied. The amounts thus paid went to the support of political subdivisions of the State. Denying the validity of any tax whatever under the franchise tax law the plaintiffs made no tender of any amount of franchise tax. Interlocutory injunctions were denied by three judges sitting in the district courts under section 266 of the Judicial Code and the plaintiffs appealed. The plaintiffs thereupon applied to the district courts for stay to prevent collection of the taxes in dispute pending these appeals, which stay was refused. The plaintiffs then applied to this court for a like stay pending the appeals, which application was here denied, but upon second application to the district courts the collection of further taxes under the *ad valorem* property tax and of all amounts levied under the francise tax was stayed pending these appeals. The entire franchise tax, therefore, which under the system of taxation created by the North Carolina statutes goes to the support of the State government, is stayed pending these appeals and the plaintiffs have contributed nothing to the support of the State government for the years 1921 or 1922.

The questions presented by the appeals in these suits being substantially if not identically the same, a motion for consolidation was duly filed by the appellees, and in order now to avoid repetition we have prepared but one brief in behalf of the appellees in all the suits. This we trust will receive the approval of the court.

Summary of the Questions Involved.

I.

The *ad valorem* property taxes are sought to be restrained upon the ground of alleged invalidity of the respective assessed valuations of the properties of the plaintiffs upon which assessments these taxes are levied.

The assessments are attacked on the following grounds:

1. That they are illegal, as having been made in violation of statutory method.

2. That they are excessive, and hence are—

In violation of the "true value" clause of the North Carolina Constitution.

A burden on interstate commerce in violation of the Commerce Clause of the Federal Constitution.

A taking of property without due process in violation of the Fourteenth Amendment.

3. That they are discriminatory, and hence are—

In violation of the uniformity rule of the North Carolina Constitution.

In violation of the equal protection clause of the Fourteenth Amendment.

II.

The validity of the franchise tax is attacked on three alleged grounds:

1. That it is a property tax, not a franchise or privilege tax, and hence is in violation of a supposed prohibition

against double taxation in the uniformity rule of the State Constitution and in the Fourteenth Amendment.

2. That if it is a privilege or franchise tax, it is for the privilege of engaging in interstate commerce, and, therefore, a burden on that commerce, in conflict with the Commerce Clause of the Federal Constitution.

3. That the respective franchise taxes have been illegally calculated, in violation of the North Carolina statutes.

We shall divide this brief into two parts. Part I will be concerned with the validity of the *ad valorem* assessment and the property taxes levied thereon. Part II will be concerned with the validity of the franchise tax.

ARGUMENT.

PART I.

THE AD VALOREM ASSESSMENTS AND TAXES.

I.

A brief history of recent legislation and administration in North Carolina with reference to ad valorem property taxation of railroads and others.

1. *The General System.*

At every regular session of the General Assembly of North Carolina are passed two general statutes having reference to taxation and revenue, the Revenue Act, and the Machinery

Act. Revenues for purposes of the State Government are raised under the provisions of the Revenue Act. The Machinery Act gives the authority and provides the machinery for the assessment of property and for the levy of taxes, the avails of which go to purposes of the political subdivisions of the State, counties, cities, towns, and tax districts. These statutes as enacted by each regular term of the Legislature are completely re-enacted and brought forward by the next succeeding Legislature, except in so far as repealed, amended, or amplified.

The Legislature meets regularly every two years, on the odd years. Real estate and railroad property are not, however, reassessed every two years pursuant to every re-enacted Machinery Act, but for many years have been assessed quadrennially. The assessed value stands as the basis for property taxation for four years, and then a new valuation and assessment are made under the provisions of the particular Machinery Act which happens then to be in effect. All personal property, on the other hand, is assessed or returned for taxation annually.

Real estate is assessed for taxation by local assessors in each county where located and that assessment is the basis for all county, city, and other local taxation purposes.

Railroads are assessed, and have been for many years, under an application of the unit rule, as a unit or totality within the State, by central assessing authorities, and then the total assessment is allocated to the counties through which the railroad runs on a mileage basis. A similar allocation is made on the mileage basis to cities, towns, and other local subdivisions through which the railroad runs. These allocated proportions of the total unit assessment are the bases for property taxation.

Until the year 1921, assessments of railroad property were made by a commission of three in its capacity as the State Tax Commission. This same commission had a further capacity as the State Corporation Commission.

A law of the year 1921 abolished the State Tax Commission as such, leaving to the Corporation Commission its functions of supervision and regulation of public service and other corporations, and created a State Department of Revenue with a Commissioner of Revenue as the head of the department. The powers and duties with reference to assessment and taxation formerly resting in the State Tax Commission were by this act transferred to the Commissioner of Revenue.

For convenience we set forth in appendices to this brief a copy of the material portions of the statutes of North Carolina pertinent to these suits, as follows: Appendix A, Revenue Act of 1919; Appendix B, Revaluation Act of 1919; Appendix C, Act of Extra Session of 1920, approving the revaluation; Appendix D, Revenue Act of 1921; Appendix E, Machinery Act of 1921.

2. *Distribution of Avails of the Ad Valorem Property Tax Between State Government and Local Subdivisions.*

Prior to 1920, in the Revenue Acts, the State took for its own purposes a percentage of the general *ad valorem* property tax, leaving the balance to the subdivisions. Railroads like other persons contributed to State support through the *ad valorem* tax.

In addition, for over twenty years, and until 1920, Schedule C of the Revenue Acts had levied a variety of privilege,

license, and occupation taxes which went to State purposes. The tax on railroads under this schedule was a privilege tax graduated on the gross earnings per mile within the State, in the form in which it appears in sections 77 and 78 of the Revenue Act of 1919. See Appendix A. In the introductory section of the schedule, section 76, it was called a "tax for the privilege of carrying on the business or doing the act named." In section 78 it was called "The annual license tax for operating railroads within the State."

Special privilege taxes were levied upon other special classes of corporations, and then in section 82 two classes of "franchise or privilege" taxes were levied upon general corporations, the first class for domestic corporations, the second, for foreign corporations in general. Section 82 (9) excluded from the operation of these general franchise or privilege taxes, railroads and the other corporations upon which special privilege taxes were imposed by other sections of the schedule.

In the first chapter of Public Laws of 1920, the *ad valorem* tax on property, including railroads, for State purposes was abolished except as to a percentage for the school fund. (See Appendix C.)

To provide additional revenue for the State, in lieu of the portion of the *ad valorem* tax thus relinquished, the rate of privilege tax on domestic and foreign corporations in general was raised from 1/25 to 1/10 of one per cent of their capital stock, various changes were made as to other special classes of corporate privilege taxes, and sections 77 and 78 in which had appeared for many years the provisions for privilege tax on railroads on gross earnings per mile in the State were repealed; section 82 (9) of Revenue Act of 1919

was amended by striking out "railroad" so that railroads should no longer be excluded from the operation of all the subsections of section 82, and a new privilege or franchise tax on railroads was enacted and inserted in section 82 as sub-section 6½.

This new sub-section substituted for the old privilege tax on gross earnings per mile the new form of franchise or privilege tax measured by 1/10 of one per cent of the total *ad valorem* assessment of the property of the railroad within the State, in the form in which it now appears in the Act of 1921, which is the franchise tax attacked in these suits.

In the Revenue Act of 1921, Section 3, the *ad alorem* tax for State purposes was entirely abolished, and it was provided that no tax on any property in the State should be levied for any of the uses of the State government and that taxes levied therein were to raise the revenues for all State purposes. Schedule C of that act brought forward the changes that had been effected by the Act of 1920. The privilege tax on chair and sleeping cars was put in the place of the old Section 77 and Section 78 was marked obsolete. The franchise or privilege tax on railroads stood as Section 82 (6½). (See Appendix D.)

Under the system of taxation now in force, therefore, no part of the *ad valorem* property tax goes to the support of the State government, but it all goes to the support of the localities in which the property has its actual situs, in the case of real property, or its constructive situs, in the case of personal property.

The State government draws its revenues from a number of sources, principal among which are inheritance taxes, income taxes, on individuals and corporations, an excise on

gasoline, the franchise taxes on corporations (the validity of which as to railroads is attacked in these suits), and the great variety of licenses, privilege, and occupation taxes imposed by Schedule B of the Revenue Act and the nature of which are shown by the titles to the various sections which are set forth in Appendix D to this brief.

3. *The Revaluation Act of* 1919 *and the Revaluation of all Property thereunder for* 1920.

The last quadrennial assessment of real property and of railroad property in North Carolina had been in 1915, and the valuations fixed by that assessment were the basis of *ad valorem* taxation for the years 1915, 1916, 1917, and 1918.

The year 1919, therefore, was the time for the regular quadrennial reassessment of such property under the system prevailing. If the ordinary course had been followed this reassessment would have been made as usual under the provisions of the Machinery Act of 1919. But this was not done. The Machinery Act was passed as usual that year, containing the same sections, 64 and 65, pertinent to assessment of railroads, but at the same session of the Legislature was passed the Revaluation Act which provided machinery for the revision of the whole system of property assessment in the State. It was under that act that the assessments here complained of were made.

As in most States, for years all property in North Carolina had been assessed for taxation below its "true value in money" at which the Constitution required it to be taxed.

In an effort to correct this and to bring all assessments up

to the constitutional requirement of true value the Revaluation Act of 1919 was passed. It provided for a complete revaluation of all property, real, personal, and mixed, including of course railroads. (See Appendix B.)

This new valuation was to be used as the basis for computing *ad valorem* taxes for the years 1920 to 1923 inclusive, *provided the assessments made under the act should be approved by the General Assembly* and the tax rates for the State and the subdivisions should be revised by and under rules laid down by the Assembly.

The power to make the revaluation and new tentative assessment of railroad properties, to be submitted to the Legislature for approval, was given to the State Tax Commission in very general terms and with no such detail as to method as Sections 64 and 65 of the Machinery Acts had provided for many years for the regular quadrennial assessments.

The revaluations of real property in general were made by the local boards pursuant to this act and real property in general was raised four times in value on an average. The results of the local revaluations were reported to the State Tax Commission as the State Board of Equalization and by it reported to the Governor for transmittal to the Legislature.

The State Tax Commission proceeded to make the tentative revaluation of the railroad properties (other than property of railroads locally assessed and which has been revalued by local boards) as required by the Revaluation Act. It called upon the railroads as authorized in Section 31 of that Act for figures as to the cost of replacement of their properties. They replied that it was utterly impossible to furnish such figures except at great expense and

time. They did furnish certain figures but made no pretense that they accurately represented the cost of replacement of their properties. (See affidavit of State Tax Commission, Southern Record, 96-101.)

Being unable to procure from the railroads the cost of replacement figures as basis for consideration as authorized by the Revaluation Act, the Tax Commission took the information available which most nearly gauged the cost of replacement, to-wit, the investment account figures. (See affidavit of Tax Commission, and report of Tax Commission to Governor. Seaboard Record, 81-82.)

Taking the investment account figures as the basis, and revising them by a consideration of the various modes and factors theretofore considered in the regular quadrennial assessments under the provisions of Sections 64 and 65 of the Machinery Act, capitalization of net income, value of stocks and bonds, and all other factors influencing the value within the reach of the commission, the Tax Commission arrived at the valuations which it fixed tentatively and reported to the Governor for transmittal to the Legislature for its consideration.

It is to be remembered that these revaluations made by the Tax Commission of railroad property *were not made under and pursuant to the terms of the Machinery Act* but were made pursuant to the special direction by the Legislature in the Revaluation Act, and for the specific purposes therein outlined. The year 1919 would have been the year for a regular quadrennial assessment of real and railroad property. Instead of such regular assessment the Legislature in the Revaluation Act provided that the old assessments for 1918 should be continued as the basis for taxation

for 1919, but that a fundamentally changed and new valuation should be made to be the basis of taxation from 1920 to 1923, inclusive, if approved by the Legislature. (See Appendix B.)

It is further to be remembered that these revaluations of raiload property made by the Tax Commission *were in no sense legal taxation assessments* until they should be approved by the Legislature. The Legislature merely appointed the Commission as its delegated agent to do this work for the Legislature, to fix tentative values and to report them to the Legislature.

The tentative valuations placed upon locally assessed property by local boards and the tentative revaluations placed upon railroads by the State Tax Commission were reported to the General Assembly and by it considered, at a time when the railroads might have been heard before the Legislature if they had so desired, and were made law by the act of 1920 (Public Laws of 1920, Ch. 1). (See Appendix C.) Until the passage of that law they were of no force or effect. *As the assessments of railroad property for taxation for 1920-1923, inclusive, they were made effective and final by the act of the Legislature of North Carolina and not by that of the State Tax Commission.*

Mfg. Co. v. Commissioners, 183 N. C., 553.

By the new assessments enacted by the Legislature of 1920, real property in general in the State was raised an average of three times what it was before; railroad property was only doubled.

More specifically the increase in valuation of all railroad property within the State of North Carolina was 99 per cent,

of real property other than railroad property 296 per cent, and of all property of all classes 194 per cent. (Affidavit of Tax Commission, Southern Record, 101).

It is the assessments of the plaintiffs' property made under this Revaluation Act which are attacked in these suits.

4. *Depression and Reduction of Certain Assessments in 1921.*

A general depression, particularly in the values of farm products, followed almost immediately after the session of the Legislature in August, 1920. The impression was general throughout the State that much real property had fallen in market value below that at which it was assessed under revaluation.

The result was that the Legislature of 1921, in the Machinery Act, Section 28 (*a-g*), provided machinery for review of the revaluation assessments and for correction of the same where they were clearly too high as of 1921, although they had been declared by the Legislature of 1920 to be the basis of taxation for 1920-1923, inclusive. (See Appendix E.)

The discretion in making such review was by this act reposed in the very same bodies who had made the revaluation. As to real property locally assessed, included locally assessed railroad property, the county boards of commissioners and the county boards of appraisers and review appointed under the Revaluation Act sat together as county boards of review.

The State Tax Commission was given the power to review the railroad assessments, upon petition of the railroad. This

power was by the act creating the Department of Revenue in the same session of the Legislature transferred to the Commissioner of Revenue.

This Machinery Act of 1921, however, did not require in any sense a reassessment, either of local property or of railroad property. The county boards of appraisers and review were authorized to meet, not to reassess property, but to investigate and determine whether real property in general in the county had been assessed under the Revaluation Act in 1920 at an amount in excess of its value in 1921, and if so to reduce the assessed values of real property throughout the county by an average percentage reduction.

In addition, to take care of individual differences, these boards were authorized to hear specific complaints by any landowner who found that his land was excessively valued after the general reduction or equalization and to act upon their findings thereon. The same method of procedure was given railroads to petition the State Tax Commission (changed by the Act of 1921 to Commissioner of Revenue) for reduction of their assessments if found to be in excess of actual value as of 1921.

The boards of review in 67 counties, in the exercise of the discretion reposed in them, reduced the real property in those counties by the average percentage reductions which are in evidence. The boards of review in the other 33 counties in the exercise of their discretion refused to make any reduction. No reductions were made in valuation of personal property, and the act of 1921 provided for no such reduction, although the assessments of personal property in the State had been enormously increased under the Revaluation Act.

The plaintiffs, at various times, applied to the Commissioner of Revenue for a review of their assessments. He considered each individual case on its merits. He reduced the assessment of the Norfolk and Southern, upon the showing of over-assessment made by that petitioner. He found that the other plaintiffs made no showing of over-assessment and he refused to reduce their 1920 assessments, which had been approved by the Legislature.

It is this fact,—that the county boards in 67 of the 100 counties of the State, upon showing of depression in their particular counties which had caused land values to be less in 1921 than in 1920, made reductions in the assessments of real property in general in those 67 counties, and that the Commissioner of Revenue found upon the facts submitted to him by the plaintiffs that they had not shown that their railroad system properties were of less value in 1921 than in 1920 (except in the one case in which he did make a reduction, Norfolk-Southern),—which is the basis of the contention of the plaintiffs in these suits that their respective assessments are unconstitutional for discrimination.

And they made this contention although in the 67 counties in which reductions in land assessments were made all railroad property not devoted to transportation purposes and which was therefore assessed by local authorities was reduced exactly like all other land in the county. It was only the railroad system property, assessed centrally under the unit rule, which (except in the case of the Norfolk-Southern) was not reduced.

II.

Summary of facts with reference to the assessments of the properties of the appellants.

As has been said, instead of a new regular quadrennial assessment of property in North Carolina being made in 1919, the Revaluation Act provided that the same assessed valuations which had obtained for the previous four years should be carried forward and be the basis of taxation in 1919 and that the new valuations arrived at in the revaluation of all property should, when approved by the Legislature, be the basis of taxation for 1920, 1921, 1922 and 1923.

The appellant railroads were therefore taxed in 1919 upon the same assessed valuations as in 1918 and the three years before. And they paid property taxes on those valuations without protest or objection.

The revaluation raised all of these assessed values for 1920 and although the appellants did not bring suit to restrain 1920 taxes it does appear that they paid property taxes in that year under protest. It was only in 1921, when the appellants, except the Norfolk Southern, were taxed again upon the 1920 revaluation assessments, and when in certain counties of the State real property in general had been reduced below its revaluation assessment, that the appellants brought these suits alleging that their assessments, too, were excessive and that failure to reduce them was a discrimination against them, although in 33 counties of the State there was no reduction in assessment of any property, although there had been no reduction of tax valua-

tion of any personal property, and although the revaluation itself had not only doubled railroad assessments whereas it had more than tripled real property assessments in general. It is only the taxes for 1921 which are here in litigation, although some of the appellants allege that the assessments in question were excessive and unconstitutional both in 1920 and in 1921.

It is pertinent, however, to see three facts as to each of the appellants: 1. What the 1919 assessment was; 2. What the "revaluation" assessment approved by the Legislature for the years 1920-1923 inclusive was; and, 3. What effect, if any, the petition to the Commissioner of Revenue to reduce the said "revaluation" assessment had in 1921.

The total assessment, both of railroad system property centrally assessed under the unit rule and apportioned and of property not devoted to transportation purposes and therefore locally assessed, as the same had stood since the last previous quadrennial assessment, and as it was carried forward an extra year to be the basis of *ad valorem* taxation for 1919, was for the respective appellants as follows:

Southern	$46,869,942
Atlantic & Yadkin	1,975,806
Seaboard	20,191,720
Atlantic Coast Line	34,645,345
*Norfolk Southern	.....

* (The record does not show what the assessment was prior to 1920 and no point is made by that plaintiff as to comparison between the 1920 assessment and the former assessment.)

Under the revaluation, made tentatively by the State Tax Commission under the terms of Revaluation Act of 1919 and approved by the 1920 Extra Session of the Legislature and thereby made the legal assessment for 1920 to 1923 inclusive, the assessed valuations of the appellants were established as follows:

Southern	$96,605,694
Atlantic & Yadkin	4,104,710
Seaboard	34,768,440
Atlantic Coast Line	50,867,800
Norfolk Southern	27,023,462

Ad valorem taxes were paid by all the plaintiffs in the year 1920 upon the assessments last stated and those assessments stood as the quadrennial assessments of the property of the plaintiffs, to be the basis of ad valorem taxation for the years 1920, 1921, 1922, and 1923 as provided by the Act of 1920 (Appendix C) *except as such assessments should be changed thereafter under the provisions of law.*

The provisions of law under which they might be changed were those contained in the Machinery Act of 1921 (Appendix E, Sec. 28*g*) as amended by the Act of 1921 substituting Commissioner of Revenue for State Tax Commission and which section so amended reads as follows:

> "Any tax payer owning property assessed originally by the State Tax Commission (Commissioner of Revenue) may make application to the State Tax Commission (Commissioner of Revenue) for a review of the assessment of its property in the same manner herein provided for complaint by the prop-

erty owners before the county boards, and the State Tax Commission (Commissioner of Revenue) may hear and determine such complaints."

It is of the first importance to remember that under the laws of North Carolina the Commissioner of Revenue *had no duty* or power with reference to assessment of railroad property for taxation, from the time of the creation of his office in 1921 until the year 1924 or the termination of the force and effect of the quadrennial assessment approved by the Legislature for 1920-1923, inclusive, except such duty and power as was imposed and conferred upon him by the section just above quoted of the Machinery Act of 1921.

This quadrennial assessment for those years had already been made and approved by the Legislature the year before the office of Commissioner of Revenue was created, and upon the creation of that office the Commissioner was not required by statute and had no right or power to make any assessment for taxation until the year 1924. All he had power or duty to do was to hear petitions or applications for review and reduction of the assessment of any taxpayer centrally assessed who might bring before him such application under the said section 28*g*.

He was under no circumstances authorized to raise any assessment. He was under no statutory duty to make any original valuation of his own or to proceed to make any original assessment as his own act. He was merely empowered to hear and pass upon the evidence which might be submitted to him by any complaining taxpayer whose property had been centrally assessed in 1920, and to determine upon that evidence whether that taxpayer's assessment should be reduced.

All of the plaintiffs, however, when they filed their bills of complaint were under a fundamental misconception as to the statutory powers and duties of the Commission of Revenue in 1921, and they all, as the basis of their allegations that the statutory method of assessment had been violated, alleged that the Commissioner of Revenue *assessed their properties* at the amounts stated for the year 1921, and that in doing so he did not follow the method prescribed by the Machinery Act of that year. (Southern Record, p. 9, art. 4; A. & Y. Record, p. 6, art. 4; Seaboard Record, p. 10, art. 6; A. C. L. Record, p. 22, art. 16; Norfolk Southern Record, p. 7, art. 11.)

These allegations are denied by the defendants and they set forth in their answers to the bills the true situation as to the statutory powers and duties of the Commissioner of Revenue for the year in question in these suits, 1921. (Southern Record, p. 36, art. 4; A. & Y. Record, p. 28, art. 5; Seaboard Record, p. 35, art. 6; A. C. L. Record, p. 51, art. 16; Norfolk Southern Record, p. 37, art. 11.)

Upon the allegations and under the statutes it is perfectly clear that no assessments for 1921 were made at all, either by the Commissioner of Revenue or by anybody else; that the assessments involved in these suits were all made under the Revaluation Act of 1919 as tentative valuations by the State Tax Commission, approved in 1920 and made legal valuations by act of the Legislature, and by that act adopted as quadrennial assessments to be the basis of *ad valorem* taxation without the making of any new assessments for the years 1920, 1921, 1922, and 1923.

What the Commissioner of Revenue did in 1921, and all he had the statutory right or power to do, was to entertain the

applications which each of the plaintiffs made to him under section 28*g* of the Machinery Act of 1921 asking him to reduce the said quadrennial assessment as being excessive for 1921, to hear the evidence adduced as to such alleged excess, and to determine the merits of the application in each case.

In the cases of the applications of the Southern, A. & Y., Seaboard, and A. C. L., upon the evidence adduced to prove that the quadrennial assessments were excessive for the year 1921, the Commissioner of Revenue decided in the exercise of the discretion reposed in him by the statute that no excess had been shown and that the said railroads had not shown cause why he should exercise the power to reduce the quadrennial assessment. In the case of those railroads, therefore, the 1920-1923 assessment was carried forward and was left as the basis of taxation for 1921. There is no suggestion in allegation or in proof in any of these cases that the Commissioner of Revenue in passing on these applications to reduce did not act in perfect good faith and in the honest and *bona fide* exercise of his official discretion in passing upon the evidence submitted to him and in refusing to make reductions.

In the matter of the application of the Norfolk Southern for reduction he did decide upon the evidence adduced that the revaluation quadrennial assessment of $27,023,462 was more than the actual value of the properties in North Carolina of that railroad for the year 1921 and accordingly, in pursuance of his only statutory power, he reduced that assessment to $22,840,932, which sum should be the basis of *ad valorem* taxation for the rest of the quadrennial period. The sum of $22,840,932 was not, however, an assessment of

the Norfolk Southern property made by the Commissioner of Revenue for 1921 under the provisions of the Machinery Act of 1921, but was the quadrennial assessment of 1920-1923 made in 1920 under the provisions of the Revaluation Act and reduced by the Commissioner of Revenue in 1921 under the specific power granted him by section 28*g* of the Machinery Act of that year. This distinction is no mere technicality. It has a controlling bearing on the attack which the plaintiffs make on the method of assessment, as we shall see.

As to the particular case of the Norfolk Southern, whose petition for reduction was granted, we shall show in a subsequent portion of this brief that the Commissioner of Revenue not only reduced that railroad's assessment for 1921 but reduced it to one of three figures submitted to him by the Norfolk Southern in the said application as being valuations of its property arrived at by three different possible methods of valuation other than that which had been used in 1920, and that the Norfolk Southern filed no exception to this action of the Commissioner, made no protest against it, but acquiesced in the reduced assessment of $22,840,632 (a reduction of $4,182,530 below the assessment upon which it had paid *ad valorem* taxes in 1920) and continued to acquiesce in it until after the Southern on September 22, 1921, the A. & Y. on the same date, and the A. C. L. on September 26, filed their respective bills attacking the taxation system of the State as applied to railroads. Nearly a month later, on October 17, the Norfolk Southern decided to join in the attack if anything might be gained thereby and filed its bill in the Eastern District of North Carolina. We shall show, therefore, that the Norfolk Southern cannot

be heard in equity to complain of its assessment and *ad valorem* taxes and that the only substantial question in its suit is the same as that in the others as to the franchise tax.

Again, as to the Norfolk Southern no point is made as to increase of the revaluation or 1920-1923 assessment over the prior assessment upon which *ad valorem* taxes were levied in 1919. The only contention of that plaintiff is that the 1920-1923 assessment, as reduced by the Commissioner upon its petition in 1921 from $27,023,462 to $22,840,932, was illegal and unconstitutional although fixed at a sum which we contend was fully acquiesced in by that company.

As to the other appellants the following table shows the assessment upon which *ad valorem* taxes were paid in 1919, the revaluation assessment upon which taxes were paid in 1920, the same assessment as affected by reductions in local property valuations but as unchanged as to centrally assessed property and upon which taxes are levied for 1921 (the taxes here litigated):

	1919.	1920.	1921.
Southern	$46,869,942	$96,605,694	$96,306,357
A. & Y.....	1,975,806	4,104,710	4,104,710
Seaboard	20,191,720	34,768,440	34,768,440
A. C. L.	34,645,345	50,867,800	50,867,800

The figure $96,306,357 upon which assessment the taxes are levied against the Southern for 1921 is less than that for 1920, not by reason of any reduction made by the Commissioner of Revenue of the assessment of railroad system property centrally assessed, for he made none, but by reason of certain reductions in property of that railroad locally assessed, the total assessment being the result of adding locally

assessed property values to centrally assessed property values. As to these four appellants the centrally assessed property stands still at the value assessed under the Revaluation Act in 1920, and it is the legality and constitutionality of those assessments, made under the provisions of the Revaluation Act of 1919, and specifically approved and adopted by the Legislature in 1920, which is attacked in these suits.

III.

Differences between the respective bills of complaint of the appellants.

As to the franchise or privilege tax, discussed in Part II of this brief, there is no substantial difference between the bills of complaint of the respective plaintiffs. They all attack that tax on the same grounds, and in that part of the brief, therefore, there will be no occasion for drawing distinctions between the respective suits.

As to the attack made upon the assessments and the *ad valorem* taxes, however, there are material differences between the various bills of complaint which require attention.

The broadest attacks upon the assessments and property taxes are those made by the Southern and by the Atlantic Coast Line in their respective bills of complaint. Those two plaintiffs present the same points and contentions in their virtually identical pleadings.

They both allege that their property in North Carolina was assessed for 1920 (the revaluation assessment) in excess of its true actual value and that the 1920 property taxes which they paid under protest were therefore illegal and

unconstitutional. They both then allege that the same illegality and unconstitutionality existed as to the 1921 taxes now in litigation since the assessment was still in excess of true actual value.

They further allege that even if the 1920 assessment had been at true value, their properties were not worth as much in 1921 as in 1920, and that therefore it was illegal and unconstitutional to tax them in 1921 upon the same property valuation as in 1920. And they allege that to do so was to discriminate against them in violation of the State and Federal Constitutions by reason of the fact that in a majority of the counties in which they have property the "revaluation" or 1920 assessments of real property in general were reduced under the provisions of the Act of 1921, while the Commissioner of Revenue refused to reduce theirs.

The principal points made by those two plaintiffs therefore are: excessiveness of their assessments as originally made in 1920 and as carried forward in 1921; and discrimination in failing to reduce those assessments for 1921 in proportion to reductions made in tax valuation of other property in the State.

On this phase of the suits, the complaints of the Seaboard and of the Norfolk Southern are much narrower in scope. While the Southern and the Atlantic Coast Line allege that their 1920 assessments were excessive and that their 1921 assessments, not having been reduced, are even more excessive, the Seaboard specifically alleges that in 1920 its property in North Carolina was correctly assessed for taxation, according to law (Seaboard Record, p. 16). Therefore the only complaint which the Seaboard makes against the assessment of its property is that it was not reduced in

1921 by analogy with the reductions of assessments of real property made in certain counties. The complaint of the Seaboard, therefore, presents only two questions: the question of the franchise tax, and the question of discrimination. And the discrimination complained of is that alleged to have been used by the Commissioner of Revenue in his refusal to reduce the assessment upon the Seaboard's petition. Although on the hearing in the district court, the Seaboard sought to argue that there was another kind of discrimination in that for years, as it contended, while its property had been taxed at least at true value, other property in the State had been taxed at less than true value, there is no such allegation in the complaint of that or any other plaintiff.

The Norfolk Southern makes no allegation of discrimination by the Commissioner of Revenue in failing to reduce, for he did reduce that plaintiff's assessment. The only contention of discrimination made by that plaintiff is that while other property in the State is taxed at true value or less than true value, its property is assessed at more than its true value. So that plaintiff's contention as to discrimination is merely a contention of excessiveness of assessment. We have referred to the peculiar facts in its case upon which we contend that it acquiesced in its assessment.

All of the plaintiffs fill a large part of their complaints with allegations of violation of statutory method of assessment of which they contend the Commissioner of Revenue was guilty in *making assessments of their property in 1921,* when the fact is, as we have already shown, that he made no assessments. We shall show that there is absolutely no merit in these contentions as to method.

The case of the Atlantic and Yadkin is unique. That railroad is part of the Southern Railway system. Its entire capital stock is owned by the Southern. For years its property has been assessed together with that of the Southern in North Carolina, and then an apportionment made to it of part of the total. When the 1920-1923 assessment was made this same plan was followed and the total assessment arrived at and approved by the legislature of the properties of the Southern System in North Carolina was $101,960,413. This figure was then handed to Mr. Hubbard, Tax Commissioner of the Southern Railway, and he was asked to work out a proper apportionment of this total between the Southern Railway and the Atlantic and Yadkin. He took this datum to Atlanta with him and worked out an apportionment of the total to each of the roads comprising the Southern System in North Carolina, which apportionment gave to the Atlantic and Yadkin the assessment now complained of, to-wit, $4,104,709. This result he sent to the State Tax Commission with a letter showing that he suggested it as a proper distribution of the total among the component roads of the system (A. & Y. Record, pp. 96-99).

With particular reference to the apportionment to the A. & Y. suggested by him he said:

> "If you feel that any of these values are too high, I would suggest that it would be entirely proper to give a further arbitrary increase to the North Carolina Midland and to the Atlantic and Yadkin, in order to absorb any reduction on the double track."

It results therefore that it was at the suggestion of the Atlantic and Yadkin's own tax commissioner that its assessment was fixed at $4,104,709.

Unless, therefore, the Southern has shown that the assessment of the whole of the properties of the Southern System at $101,960,413 was illegal and unconstitutional and should be enjoined the Atlantic and Yadkin has no standing to complain of its assessment and *ad valorem* taxes. Its suit will succeed or fail with that of the Southern.

The suits, with reference to differences in the bills of complaints as to assessments and property taxes, fall therefore naturally into three groups: *First,* the Southern and the Atlantic Coast Line, with the Atlantic & Yadkin as a dependent satellite to the Southern; *second,* the Seaboard, contending that its revaluation assessment was right in 1920 and only complaining of discrimination in that it was not reduced in 1921; and *third,* the Norfolk Southern complaining that its assessment was excessive even after it had been reduced in 1921 to a sum in which we say it acquiesced.

We repeat that as to the question of the franchise tax all five suits are identical.

IV.

The plaintiffs have made no showing of illegality on their allegations of violation of statutory method.

1. *The contentions of the plaintiffs as to method.*

The first argument of the plaintiffs met in these cases is one addressed not to any consideration of constitutionality but to a pure question of legality of the assessments under

the statutes of North Carolina. This argument is made with great variety and in great detail and the major portion of each of the bills of complaint is devoted to its elaboration.

As the basis for it the plaintiffs quote Sections 64 and 65 of the Machinery Act of 1921, and the identical sections of the Machinery Act of 1919.

The plaintiffs contend then that the State Tax Commission made an assessment of their property in 1920 under the provisions of those sections of the Machinery Act of 1919 and that in making it the Commission violated the provisions of those sections with reference to the method of assessment prescribed; they further contend that in 1921, when a later statute had substituted in those sections "Commissioner of Revenue" for "State Tax Commission," the said Commissioner of Revenue *made an assessment* of their property for 1921 under the provisions of the said sections of the Machinery Act of 1921 as amended, and that in making it he violated the provisions of those sections with reference to the method of assessment prescribed.

The various respects in which it is contended that the State Tax Commission in 1920 and the Commissioner of Revenue in 1921 violated those sections in making an assessment of the property of the plaintiffs are as follows: That there was no separate assessment of tangible and intangible property, or if so plaintiffs were not notified as to what that separation was; that no due consideration of the actual cost of replacement of the property, with just allowance for depreciation of rolling stock, was given; that the franchise or intangible property value was not assessed by a due consideration of the gross earnings as compared with the operating expenses,

or of the market value of the stocks and bonds; that the particular method of assessing interstate roads prescribed in Section 65 was not followed.

And the plaintiffs endeavor to prove that the statutory method prescribed in those sections was not followed by making a comparison of their actual assessments with what they contend to be the cost of replacement of their property (as shown by the *tentative* figures of the Interstate Commerce Commission), with capitalization of their net earnings at 8 per cent (they contending that 6 per cent, the legal rate in North Carolina, is an illegal percentage at which to capitalize), with quoted values of their stocks and bonds at given times, and with various other figures and sums which they contend might be valuations of their properties in North Carolina arrived at by other methods than that which they contend was followed by the State Tax Commission and by the Commissioner of Revenue.

We repeat that all these arguments of the plaintiffs address themselves to no consideration of constitutionality but merely to the question of legality under State statutes, and that all these arguments are based on two premises, to-wit: *First*, that the State Tax Commission in 1920 and the Commissioner of Revenue in 1921 made assessments for taxation of the property of the plaintiffs; and *second*, that those respective assessments were made under the provisions of the said sections of the respective Machinery Acts for those years and in order to be legal were required to be made in compliance with the statutory method prescribed by those sections.

2. *The State Tax Commission in* 1920 *and the Commissioner of Revenue in* 1921 *Made No Assessments.*

All those contentions of the plaintiffs fall to the ground when we see that their first premise fails, that neither the State Tax Commission in 1920 nor the Commissioner of Revenue in 1921 made assessments of the properties of the plaintiffs and that the assessments here complained of were in no legal sense the act of that board or that officer.

We have already shown that the assessments complained of in these suits were not made pursuant to the provisions of the regular Machinery Acts as usual, but that in 1919 the Legislature passed the Revaluation Act which provided special machinery for a complete revaluation and reassessment of all the property in the State and that the assessments here involved were made under the particular provisions of that act.

Section 2 of that act provided:

> "That for the purpose of making a complete list of all the property of every citizen of the State, real, personal, and mixed, and of having all of such property valued in accordance with the rule laid down in the Constitution of the State at its true value in money, and to be adopted and used as the basis of all taxes levied by the State, counties, cities, towns and other taxing districts of the State for the year one thousand nine hundred and twenty, *the machinery hereinafter set out is provided.*" (Italics ours.)

Section 3 thereof provided:

> "The assessment made under the provisions of this act *shall not be used as the basis for computation of taxes unless and until the same has been approved by*

the General Assembly and until the tax rates levied by the State have been revised by the General Assembly, and the tax rates levied by the counties, cities, towns, and special tax districts of the State have been revised under the rules to be laid down by the General Assembly * * *" (Italics ours.)

And the particular directions for the revaluation of railroad property were contained in Section 31 of that act as follows:

"Sec. 31. *Railroads, telegraph, telephone, street railway companies.*

"As of the first day of May, one thousand nine hundred and nineteen, the State Tax Commission *shall make a complete revaluation of the property of all railroad,* telegraph, telephone, and street railway *companies,* to be used as the basis for computing taxes for such companies *for the years one thousand nine hundred and twenty, one thousand nine hundred and twenty-one, one thousand nine hundred and twenty-two, and one thousand nine hundred and twenty-three,* such revaluation to be made in accordance with the general rule and intent and purpose of this act as to all other property. The commission shall have the right to require all information required by chapter two hundred and thirty-four of the Public Laws of one thousand nine hundred and seventeen to be furnished by such companies, and also a sworn estimate, by a responsible officer of every such company of the *cost of reproduction* of the properties of such companies new, including sidetracks, doubletracks, and all properties owned by such companies in this State, *less reasonable depreciation for such of its properties as have depreciated in value,* and shall also include the *present value of all real estate used as rights of way,* including depot sites, yards, terminals, and

> otherwise. All properties of this class that have been operated by the United States Government shall report the earnings during such period of operation and also the compensation paid, or agreed to be paid, for their use, and if no agreement has been made, the amount of compensation asked for by the owners." (Italics ours.)

What the Legislature did, therefore, was to delegate to local boards the power to revalue properties theretofore locally assessed, and to delegate to the State Tax Commission the technical work of revaluing the property of railroads and others centrally assessed. But these bodies did not make legal taxation assessments. They made valuations, under the rules prescribed by the Revaluation Act, which were to take effect as taxation assessments ("to be used as the basis for compensation of taxes") only when approved by the General Assembly.

The revaluation of the properties of the plaintiffs was made by the State Tax Commission pursuant to this act and was by it reported to the General Assembly, which approved the same and made the valuations arrived at effective as taxation assessments by Chapter 1, Public Laws, Extra Session 1920, as follows:

> "The General Assembly of North Carolina do enact:
>
> "Section 1. That the assessment or valuation of property made under the provisions of chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen is hereby approved by the General Assembly and adopted as the basis for the levy of tax rates by the State and by all subdivisions of the State for which taxes are levied for the year one thou-

sand nine hundred and twenty, and the valuation of real property so fixed shall be adopted for the years one thousand nine hundred and twenty-one, one thousand nine hundred and twenty-two, and one thousand nine hundred and twenty-three, except as such valuations may be hereafter changed according to law."

It was not the act of the State Tax Commission but the foregoing act of the Legislature of North Carolina which breathed the breath of life into the revaluation of the plaintiffs' properties and made them effective as assessments, the basis of taxation.

As we have already shown, the Commissioner of Revenue made no assessment of the plaintiffs' properties in and for 1921. The valuations adopted by the Legislature and by it made assessments, the basis of taxation, were so adopted and made by it for the years 1920, 1921, 1922, and 1923. It required no act of the Commissioner of Revenue to make assessments in 1921. They were already made and approved by the Legislature for the quadrennial period. No new assessments were authorized or required to be made until 1924. This was the status when the office of Commissioner of Revenue was created in 1921. It is true the Machinery Act, as amended, of that year carried the same Sections 64 and 65 which are always carried in it, and which prescribe a method for assessment of railroad properties by the Commissioner of Revenue "at such dates as real estate is required to be assessed for taxation." But there have been no such dates since the year before his office was created. And there will be no such dates until 1924, for assessments for the entire four-year period prior to that year have already been made

and approved by Act of the General Assembly before the office of Commissioner of Revenue was created.

It is perfectly clear that the defendant Commissioner of Revenue made no assessments in 1921 and will not make any until 1924, and that until that date he will never be under the requirement of following the statutory method of assessment set forth in Sections 64 and 65 of the Machinery Acts if they are still in effect in 1924.

It results that neither the State Tax Commission in 1920 nor the Commissioner of Revenue in 1921 made any of the assessments complained of. There is no basis in fact or in law, therefore, for the contention that any assessment by the said Commission or the said Commissioner was illegal.

3. *The Allegations of the Plaintiffs that the Assessments are Illegal as Not having Been Made in Compliance with Statutory Method are Without Merit.*

We contend in the first place that it is clear that the assessments in question were made under the provisions of the Revaluation Act and in accordance with every requirement thereof.

But in any case the complete answer to all the plaintiffs' contentions as to illegality for violation of statutory method is to be found in the undisputed fact that, whoever made the valuations of the paintiffs' properties now in question as assessments, and under whatever statute they were made, the Legislature of the State adopted and approved those valuations by the Act of 1920, and gave them effect as assessments for the four years following.

The General Assembly of North Carolina made these

valuations to be assessments for 1920-1923 and the Legislature can not be bound by its prior statutes to follow them in its subsequent enactments. The Legislature cannot be charged with acting illegally. *It is the author of law.*

The State's power to tax is a sovereign power. This power is supreme except as restricted by constitutions. This sovereign power is reposed in the Legislature. The extent to which it shall exercise the power to tax, the subjects upon which it shall be applied, and the *method or mode* in which it shall be exercised, are entirely within the discretion of the State Legislature.

McCulloch v. Maryland, 4 Wheat., 316.
Lane County v. Oregon, 7 Wall., 71.
Shaffer v. Carter, 252 U. S., 37.

In *Lane County v. Oregon, supra,* speaking of this power of the States, it is said:

> "In respect, however, to property, business, and persons, within their respective limits, their power of taxation remained, and remains entire. It is, indeed, a concurrent power, and in the case of a tax on the same subject by both governments, the claim of the United States, as the supreme authority, must be preferred; but with this qualification it is absolute. The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised are all equally within the discretion of the Legislature to which the States commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the State Constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the National Government."

In the recent case of *Shaffer v. Carter, supra,* it was said to the same effect:

> "All subjects over which the sovereign power of the State extends are objects of taxation. * * * These subjects are persons, property, and business. * * * It (taxation) may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the Federal Constitution, the power of the States as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction. *State Tax on Foreign-held Bonds,* 15 Wall., 300, 319. See also *Welton v. Missouri,* 91 U. S., 275, 278; *Armour & Co. v. Virginia,* 246 U. S., 1, 6; *American Mfg. Co. v. St. Louis,* 250 U. S., 459, 463."

Of what importance is the question of method in tax assessments? Only this:

This power can only be exercised by the Legislature or by delegation from the Legislature. If the Legislature delegates the power to make assessments to a board, or commission, or officer, and prescribes a method by which it or he shall make the assessment, the assessment must be made by the use of that method. If the delegated power to assess is not exercised according to the method prescribed by the sovereign Legislature, then the assessment is not a *legal* assessment and the tax thereon is not a legal tax. This has nothing whatever to do with constitutionality.

If the Legislature, however, chooses to approve the work of a board to which the power of valuation or assessment is delegated, it cannot be restricted to approving any particular

sort of method. The method is in the discretion of the Legislature. It has the power to approve any method which may have been used, and if the board may have even directly violated a previously prescribed statutory method, the approval of its act by the Legislature purges it of any illegality.

The Legislature of North Carolina, instead of leaving the legal assessments to be made by boards with delegated powers, and prescribing the methods in which it should be done by them, merely delegated to them the power to make tentative valuations to be reported to the Legislature itself. These valuations, whether of the county boards or of the State Tax Commission, had no legal effect. The Legislature then took the valuations reported to it, considered them, and made them law in the act of 1920. They were made effective by the act of the General Assembly, not by the act of the county boards nor of the State Commission. They were not made pursuant to law. *They were law. They cannot be illegal.*

All the strained *minutiæ* into which the complaints and the arguments of the plaintiffs run in an effort to show that the revaluation assessments made by the Legislature were not made in compliance with the methods laid down in Sections 64 and 65 of the Machinery Act result in arguing that the Legislature in enacting the act of 1920 did not follow the provisions enacted by itself in the Machinery Act of 1919, the year before. All of these arguments are based on the false assumption that the State Tax Commission did something which had legal effect. Its work was purely advisory.

There is no possible question of method or of illegality of 1921 assessments. There are no 1921 assessments. There are only assessments enacted by the Legislature in 1920 to

last for four years. The Commissioner of Revenue has made no assessments and had no right or power to do so. He has never had, and will never have, to follow the methods of assessment outlined in the Sections 64 and 65 of the Machinery Act until 1924. The only statutory provision governing his action in reviewing the 1920 assessments is section 28 (*g*).

We may dismiss all questions of illegality of assessments and of violation of statutory method from further consideration in these suits. Only constitutional questions remain.

V.

The plaintiffs have no standing in court to attack their assessments, or to seek injunction to restrain their ad valorem taxes levied thereon, since none of the bills attack or allege to be unconstitutional the Act of 1920 which approved and made effective those assessments.

In view of what has been shown above, an examination of the bills of complaint will show that not one of them contains any allegations upon which the question of the validity or constitutionality of assessments is properly before the court.

They are all drawn with a misconception of fundamental facts as to how the assessments complained of were made and allege that acts of the State Tax Commission and of the Commissioner of Revenue in making assessments were illegal and unconstitutional, but there is nowhere any allegation attacking the Act of the Special Session of 1920 (chapter 1) which was the act of the Legislature adopting and approving the assessments here attempted to be challenged.

Even though adopted and made effective by the Legislature assessments must of course be in accordance with

the State and Federal Constitutions, but the constitutionality of an assessment approved and made effective by statute of the Legislature can only be brought in issue in suits in equity by allegations of the unconstitutionality of that statute under either the State or Federal Constitution.

The plaintiffs do not allege that the Act of 1920 was unconstitutional or deprived them of any constitutional right. The question of the validity of that statute is in no way raised in any pleadings in these suits. The assessments are valid as long as the Act of the Legislature approving them stands, and it stands until attacked as unconstitutional by proper allegation in complaint.

On this ground alone the District Courts were right in refusing to grant injunctions to restrain the collection of *ad valorem* property taxes. There were no allegations to support their jurisdiction to grant that relief. As to that relief there was no equity in the bills of complaint.

We shall, nevertheless, proceed to show that even if the question of the constitutionality of the assessments had been properly before the District Courts the plaintiffs showed no case for the granting of injunction on the ground of unconstitutionality.

VI.

The plaintiffs have made out no case for equitable relief, under either State or Federal Constitutions, on their allegations of excessive assessments.

The plaintiffs contend that the assessments upon which *ad valorem* taxes are levied against them by North Carolina are excessive and that they therefore violate the true value clause of the State Constitution and the Commerce Clause

and the Due Process Clause of the Fourteenth Amendment of the Federal Constitution.

We shall first discuss the general principles governing questions of constitutionality as to amount of taxation assessments under all these constitutional provisions and show that under none of them have the plaintiffs presented cases raising any question of constitutionality, or showing any equity to support the prayer for injunction.

We shall then give particular attention to the plaintiff's contentions of unconstitutionality under the Fourteenth Amendment and to their contention of unconstitutionality under the commerce clause. And we shall undertake to show that as a matter of fact, upon the pleadings and evidence there has been no overassessment of the properties of the plaintiffs.

1. *Assuming that the assessments are excessive as alleged, there is nothing in these suits that would justify the court in enjoining collection of taxes thereon as being unconstitutional.*

Remembering that the assessments in question were those approved by the Legislature of North Carolina by the Act of 1920, we see that they were based on new valuations of the property of the plaintiffs made by the State Tax Commission under the terms of the Revaluation Act. This Commission is an administrative and quasi-judicial body composed of three men, all experts with long training and experience in the tax valuation of railroads and other public utility companies in North Carolina. (Southern Record, 99.)

They made their tentative valuations and reported them to the General Assembly at a time when the plaintiffs could have appeared and been heard before the appropriate committee of the Legislature, and could have offered there any evidence they might have had of mistake on the part of the Commission or overvaluation of their property. These valuations were considered in the public sessions of the Legislature and were by act of that Legislature approved and adopted as taxation assessments, made the basis of taxation, for four years.

The first year, 1920, the plaintiffs all paid taxes on the said assessments. The second year, 1921, they all bring suits in the Federal courts to restrain their collection, alleging that said assessments are excessive and hence unconstitutional.

But in their bills of complaint they nowhere allege that the State Tax Commission, in making the tentative valuations which were made assessments by the Legislature, acted with anything other than the utmost good faith and the exercise of the best judgment of its members doing the work. There is nowhere any allegation of fraud. There is nowhere any allegation of deliberate or intentional overvaluation of the property of the plaintiffs. There is nowhere any allegation of a purpose, plan, or agreement among the members of the Commission to place excessive valuations on the property of the palintiffs. There is no allegation, and no suggestion or intimation in the proof, that any facts were hidden, that any undue influence was exerted upon the Commission or by it or any one else upon the Legislature. There are no such allegations even as those which appeared in the bill of complaint in the case of *Chicago, etc., R. Co. v.*

Babcock, 204 U. S., 585, that the board was induced by political clamor and fear arbitrarily to fix excessive assessments, or that they acted under political duress and in pursuance of a fraudulent scheme.

Taking the bills most favorably for the plaintiffs their allegations as to excessiveness of assessments amount to nothing more than a charge that the assessments are erroneous and are the result of mistakes and errors of judgment on the part of the commission which did the technical work of valuation, and that taxes levied thereupon are consequently burdensome and oppressive upon the plaintiffs.

The Federal courts are not a harbor in which can be found refuge from ill-advised, unequal, and oppressive State legislation.

Mobile County v. Kimball, 102 U. S., 691;
Magoun v. Ill. Trust and Sav. Bank, 170 U. S., at 293.

In the *Magoun Case, supra,* it was said by Mr. Justice McKenna:

> "Nor with the impolicy of a law has it (the Supreme Court of the United States) concern. Mr. Justice Field said, in *Mobile County v. Kimball,* 102 U. S., 691, that this court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive State legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of State laws is not necessarily an objection to their constitutional validity.'"

If there is nothing more than mere irregularity in valuation and assessment proceedings, injunction will not lie.

Adams Express Co. v. Ohio, 165 U. S., 229;
Covington v. Rockingham, 93 N. C., 134;
Elliott on Railroads, 3rd Ed., Sec. 904, cases cited.

As to the method of making an assessment, it cannot be mathematically accurate. Various elements enter into the valuation, and all that is required is the exercise of an honest judgment, based upon the information at hand or obtainable.

Brooklyn Street Railway Co. v. New York, 199 U. S., 48.

The courts will not review a mere error of fact in assessment of property for taxation, where a lawful principle was followed and no fraud is charged.

Pittsburgh, etc., R. Co. v. Backus, 154 U. S., 421;
Western Union v. Taggert, 163 U. S., 1, 36;
Adams Express Co. v. Ohio, 165 U. S., 229.

In the case of *Western Union v. Taggert, supra,* it was said:

> "The allegation that 'the attempted and pretended valuation of complainant's said property by said State Board of Tax Commissioners, in manner aforesaid, necessarily includes, and does in fact include, values which are not a part of the true cash value of the property of complainant in Indiana,' is but the equivalent to an assertion that the decision of the tax commissioners upon the question of fact committed by the statute to their determination was erroneous. As said by this court in *Pittsburgh, etc., R. Co. v. Backus,* above cited, 'Whenever a question of fact is thus submitted to the determination of a special tribunal, its decision creates something more than a mere presumption of fact, and if such determination comes into inquiry before the courts it cannot be overthrown by evidence going only to show that the fact was otherwise than as so found and determined.'"

The same language was quoted and approved again in the case of *Adams Express Co. v. Ohio,* 165 U. S., at 229.

All valuation of property for taxation is a matter of opinion. An assessing board may act on its own knowledge of conditions, circumstances, and values, as well as upon evidence designated by statute, and a court cannot substitute its opinion for that of the board to which the Legislature has granted the discretion, by seeking to review the exercise of that discretion.

State Railroad Tax Cases, 92 U. S., 610.

Therefore, courts have nothing to do with allegations of absurd, excessive, or mistaken calculations of an assessing board or officer. They can only act on proof of fraud, or of a clear adoption of a fundamentally wrong principle.

Chicago, etc., R. Co. v. Babcock, 204 U. S., 596.

In that case the court said:

> "It is said that this valuation is absurd and due to misunderstanding of the table (a table of market values of stocks and bonds). But we have nothing to do with complaints of that nature, or with anything less than fraud, or a clear adoption of a fundamentally wrong principle."

The law is well settled, therefore, that a court of equity, and particularly a Federal equity court, will not hear complaints that State taxation is harsh, oppressive, ill-advised; that errors have been made in assessment of property; that the assessments are in fact too high.

The assessments complained of in these suits go back to

valuations honestly made by a board of competent experts, made in the utmost good faith and in the exercise of their best judgment, taking all of the allegations of the plaintiffs most strongly against the defendants, and made without any sort of intention to value the property of the plaintiffs at more than true value, without any sort of scheme or plan to be unjust to the plaintiffs.

The work of this quasi-judicial body, done by it by appointment and direction of the State Legislature, creates, as was said in the *Taggert Case, supra,* something more than a mere presumption of fact, and when that work comes in inquiry before the courts, it cannot be overthrown by evidence going only to show that the fact as to the values of plaintiffs' property was otherwise than as found and determined by the State Tax Commission.

And yet in these cases the District Courts were, and this court is now, asked to overthrow this work upon allegations merely that the fact as to value is otherwise than as found by the Commission, and upon proof which the plaintiffs themselves can contend only tends to show that the Commission made an error of judgment in arriving at the value found.

In these cases we have even more. Not only was the fact as to value determined by the quasi-judicial body, the Commission, with perfect honesty and in the exercise of its best judgment, but these values were publicly reported to the General Assembly of North Carolina, where they were the subject of discussion in the halls of the Legislature and before the committees thereof, where the plaintiffs were privileged to be heard to complain of them if they had seen fit, and the Legislature proceeded by statutory enactment to put

its seal of approval on the said valuations and adopted them as the basis of *ad valorem* taxation.

And it is the exercise, therefore, not only of the honest discretion of the Tax Commission, but of the deliberate judgment of the Legislature itself which the plaintiffs ask the courts to overthrow in these cases and for which they ask the courts to substitute their judgment as to the fact of value.

All valuations are matter of judgment and opinion. Mathematically accurate valuations cannot be expected to be arrived at under any system depending upon the frailties of human nature, and circumscribed by the limitations set by nature upon the human mind. And any system of law or administration is necessarily dependent upon those frailties and circumscribed by those limitations. If the officials of North Carolina, upon complaint of the plaintiffs, had reduced each of their assessments by one-third, the plaintiffs could still bring forward plausible arguments tending to show that in fact the value of their property was lower still. And the State officials could still adduce plausible contentions that the respective values were even higher than the original assessments. It would all still be matter of opinion and honest judgment and discretion upon human proofs and evidence.

The power to make this judgment and to exercise this discretion must be lodged somewhere. It is not lodged in the courts. They have no power to value property and to lay the basis for taxation. The power is lodged primarily in the legislative branch of the State governments, under our system of government, and secondarily in such administrative and quasi-judicial bodies and officers as may be granted

by the Legislature a delegation of this power. In these suits we are concerned with the results of an honest exercise of this power, not only by the subordinate body, but by the Legislature itself.

If the plaintiffs had shown, or attempted to show, that in assessing their property either the Legislature or its subordinate bodies had, as in the case of *Greene v. Louisville, etc. R. Co.*, 244 U. S. 499, intentionally, deliberately, systematically, and in pursuance of a fixed plan, taken a higher percentage of what was deemed to be the value of the property of the plaintiffs than the percentage taken for other property, we should have a case of deliberate overassessment which would raise a constitutional question and might raise equity to support prayers for injunction. But there is absolutely nothing of the kind in either allegation or proof in these suits.

It results that there are no allegations and there is no evidence in these suits, or any one of them, sufficient to raise any constitutional question as to overassessment of the plaintiffs' property for taxation, or sufficient to raise any equity to support the prayers for injunction, under any constitutional provision.

2. *In particular there is nothing in these suits to raise any question of constitutionality of the assessments under the Fourteenth Amendment.*

The valuations of the plaintiffs' property in question were made largely upon the basis of information contained in reports submitted by the plaintiffs themselves. They had an opportunity to be heard before the State Tax Commission

and again before the Legislature. The next year, 1921, each of them petitioned the Commissioner of Revenue for a rehearing and review under the provisions of statute law, and each of them was twice given a full hearing at which they adduced proofs and submitted briefs and arguments. In the case of one of them the assessment was reduced, upon the basis of the proofs submitted at the hearing, more than four millions of dollars. The Commissioner decided in the other cases, in a perfectly *bona fide* exercise of his official discretion, that no sufficient evidence had been adduced to justify him in reducing the assessment approved and adopted in 1920 by the Legislature. There is no pretense that the plaintiffs were not given every opportunity to be heard, that they were not heard, or that the decision upon the hearing was not a *bona fide* exercise of discretion.

Yet the plaintiffs contend that by reason of excessive assessments of their property the taxes levied thereon constitute a taking of their property without due process of law in violation of the Fourteenth Amendment.

As to the question of due process it is beyond argument settled that due process of law is had where the valuation of railroad properties is made on reports filed by the company, where after valuation notice is given to the taxpayer and a date is fixed for hearing complaints, where hearing may be had with testimony taken and full investigation and where review may be had by writ of *certiorari*.

Brooklyn, etc., R. Co. v .New York, 199 U. S. at 52.

It is alleged in the answers that the writ of *certiorari* would lie to bring up for review in the Superior Court of North Carolina any proceedings of the Commissioner of

Revenue whereby the plaintiffs' legal or constitutional rights may be deemed to be violated. (Southern Record, p. 52). There is no allegation or proof on the part of the plaintiffs to the contrary.

The writ of *certiorari* is specifically authorized by the Consolidated Statutes of North Carolina, section 630, as follows:

> "Writs of *certiorari, recordari,* and *supersedeas* are authorized as heretofore in use. The writs of certiorari and recordari, when used as substitutes for an appeal, may issue when ordered upon the applicant filing a written undertaking for the costs only; * * *."

And the Supreme Court of North Carolina holds that *certiorari* is the proper remedy whereby matters adjudged, decreed, or ordered by inferior tribunals and quasi-judicial commissions may be bought up for revision where no appeal is provided by law.

State v. Tripp, 168 N. C. 150;
In re Hinson, 156 N. C. 250;
State v. Webb, 155 N. C. 426;
Hillsboro v. Smith, 110 N. C. 417;
Smith v. Cheek, 50 N. C. 213;
Thompson v. Floyd, 47 N. C. 313;
Brooks v. Morgan, 27 N. C. 481;
Collins v. Haughton, 26 N. C. 420;
Matthews v. Matthews, 26 N. C. 155;
Dougan v. Arnold, 15 N. C., 99;
Allen v. Williams, 2 N. C., 17.

In the case of *State v. Tripp, supra,* it was said:

> "Both under our Constitution and statutes the writs of *certiorari, recordari* and *supersedeas* 'as heretofore in use,' have full vigor in this State (Constitution, Art. IV, sec. 8, and Revisal, sec. 584), and whenever a substantial wrong has been done in judicial proceedings, giving a litigant legal right to redress, and no appeal has been provided by law, or the appeal that is provided proves inadequate, the Supreme Court, under the constitutional provision, to all courts of the State and the superior courts of higher jurisdiction, by reason of the statute (and well sustained precedents), to all subordinate courts over which they exercise appellate power, may issue one or more of these important writs and under it see that the error is corrected and justice duly administered."

And that the applicability of the writ of *certiorari* is not confined to courts technically speaking, but that it will issue from the superior court also to commissions and such quasi-judicial bodies and officers is not subject to question, for in the case of *Hillsboro v. Smith, supra,* it was held that the writ would lie from the superior court to a board of county commissioners. The town of Hillsboro appeared before the board of county commissioners and objected to the granting of a license to sell liquors to one Smith. The board granted the license. No provision of law gave the right of appeal from the board of county commissioners. The Supreme Court held that *certiorari* would lie to bring the matter up for review by the superior court. It was said by the court in that case:

> "The town, having been thus treated as a party to the proceeding, very clearly had a right to have the action of the board of commissioners reviewed, and, as no appeal lies from that body in a case like the present, the writ of *certiorari* was properly granted."

So we see that every element referred to in the case of *Brooklyn, etc., R. Co. v. New York,* 199 U. S., at 52, is present in these cases and that there can be no question that as to the making of the assessments due process of law has been had.

The facts of these suits comply fully with the requirements of due process as laid down by this court in the leading case of *Davidson v. New Orleans,* 96 U. S., 97, 104, as follows:

> "That whenever by the laws of a State, or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole State or for some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections. It may violate some provision of the State Constitution against unequal taxation; but the Federal Constitution imposes no restraints on the States in that regard."

Even if the plaintiffs had not had an opportunity to be heard before the State Tax Commission in 1920 and before the Legislature in the same year, and even if they had not had the opportunity to be heard twice, as they were in fact, before the Commissioner of Revenue in 1921; even if they had only had one rehearing on the assessment before him, with full opportunity to adduce proofs and file briefs and make arguments, and if they had had no right to the writ of *certiorari* to have the Commissioner's decision reviewed, still under the well settled decisions of this Court it could not be successfully contended that there had been any denial of due process of law.

One hearing is sufficient to constitute due process, and a State statute giving a State assessing board power to correct valuations, naming time and place at which any person interested may be heard, does not deprive the persons assessed of their property without due process of law, because those parties do not have further opportunities to be heard by a court or the Legislature.

Michigan Central R. Co. v. Powers, 201 U. S., 245.

As applied to matters of taxation, it has been uniformly held that any system which gives to the party any means of questioning the validity or amount of the tax at some stage of the proceedings, either before it is determined and fixed or to contest subsequent proceedings for collection, is due process.

State Railroad Tax Cases, 92 U. S., 575, 610.
McMillan v. Anderson, 95 U. S., 37.
Kentucky Railroad Tax Cases, 115 U. S., 321.
Winona R. R. v. Minnesota, 159 U. S., 537.

Pittsburgh, C. C. & St. L. R. v. Board of Public Works, 172 U. S., 45.
Weyerhauser v. Minnesota, 176 U. S., 556, 557.
Voight v. Detroit, 184 U. S., 122.
King v. Portland City, 184 U. S., 69, 70.
Turpin v. Lemon, 187 U. S., 58.
Glidden v. Harrington, 189 U. S., 259, 260.
Leigh v. Green, 193 U. S., 88.
Cass Farm Company v. Detroit, 181 U. S., 396.
French v. Barber Asphalt Co., 181 U. S., 324.
Tonawanda v. Lyon, 181 U. S., 389.
Detroit v. Parker, 181 U. S., 399.

Taxation of an interstate carrier under the unit rule is not taxing property outside of the State and is not taking property without due process of law.

Delaware Railroad Tax, 18 Wall., 206.
Erie Railroad v. Pennsylvania, 21 Wall., 492.
State Railroad Tax Cases, 92 U. S., 575.
Pullman Palace Car Co. v. Pennsylvania, 141 U. S., 18, 22.
Columbus Southern Railway v. Wright, 151 U. S., 470.
Adams Express Co. v. Ohio, 165 U. S., 194, 226.

This question of validity of State taxes under the Fourteenth Amendment has been recently reviewed by this Court in the case of *Dane v. Jackson,* 256 U. S., 589, wherein the court cites numbers of the cases involving the relation of the Federal courts to the taxing systems of the States and the constitutionality of State taxes under the Fourteenth Amend-

ment, and the court succinctly summarized the law of those cases as follows:

> "Where, as here, conflict with Federal power is not involved, a State tax law will be held to conflict with the Fourteenth Amendment only where it proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation—'to spoliation under the guise of exerting the power of taxing.' For other inequalities of burden or other abuses of the State power of taxation, the only security of the citizen must be found in the structure of our Government itself."

As the court said in that case, so in these suits "the application of this summary of the law renders our conclusion not doubtful." There is nothing in any of these suits, either in the bills of complaint, in any of the proofs adduced, or in any possible inferences therefrom, which can bring them within the rule announced in *Dane v. Jackson,* or justify the court in holding that *ad valorem* taxes levied by North Carolina upon the basis of the assessments complained of in these suits propose, or clearly result in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation—*to spoliation under the guise of exerting the power of taxing.*

One concrete example is sufficient to show, not only that the plaintiffs have not brought their cases within this rule, but that the whole showing of proof is conclusive that there is no violation of the Fourteenth Amendment in the amount

of these assessments. The Seaboard, as we have already shown, in its bill of complaint specifically alleges that in 1920 its property was assessed for taxation at its true value, the assessment being $34,768,440. That plaintiff's only contention as to amount of assessment is that between 1920 and 1921 the true value of of its properties was so reduced that in the latter year $34,768,440 was such an excessive assessment of its properties as that taxes levied at the universal rates on that assessment would constitute a taking of property without due process of law in violation of the Fourteenth Amendment.

On the face of it it is impossible that that railroad's property could have so diminished in value in one short year as that taxes levied on an assessment that was correct the year before could in 1921 amount to confiscation, the taking of property without compensation, *spoliation* under the guise of taxation.

Or take the more striking case of the Norfolk Southern. That company paid taxes in 1920 upon an assessment of $27,023,462, and though it filed a formal protest against the payment it took no action, brought no suit, sought no injunction to restrain collection. It could not have thought that such taxes, although they might be too high as it contended, amounted to confiscation and spoliation under the Fourteenth Amendment. In 1921 the Commissioner of Revenue, upon the application of that plaintiff, reduced the assessment from $27,023,462 to $22,840,932. Then when taxes were about to be levied on the reduced assessment, and after the suits of other plaintiffs had been brought attacking the tax system of North Carolina, the Norfolk Southern brought its suit and alleged that to tax it on the reduced

assessment was a violation of the Fourteenth Amendment. On the face of it that could not be confiscation or spoliation under the guise of taxation.

We conclude that none of the plaintiffs has made out any case of assessments being in such excess of true value of property as to constitute a violation of the Fourteenth Amendment, and that no grounds for the granting of injunction to restrain *ad valorem* taxes as being unconstitutional thereunder have been shown.

3. *There is no showing in these suits that the assessments are such as to constitute a burden on interstate commerce, in violation of the commerce clause.*

The contentions of the plaintiffs as to the invalidity of the assessments under the commerce clause of course depend entirely upon their allegations that the assessments are excessive. And, as we have already seen, there are no allegations or proofs in the cases sufficient to raise any question of unconstitutionality of assessments as being excessive under either State or Federal Constitutions.

We have shown further that there is no basis, in fact or in law, for a contention that the assessments and taxes levied thereon constitute a violation of the Fourteenth Amendment.

Even if the bills of complaint contained any of those allegations of intentional, deliberate, systematic overassessment, of fraud or plan or scheme to assess the plaintiffs' property at more than its true value or at a higher percentage thereof than other property in the State, which allegations are necessary to raise a constitutional question as

to validity of assessments, still upon the facts of these cases and under the well settled principles of law, the *ad valorem* taxes here in question are not a burden on interstate commerce, do not violate the commerce clause, and in fact are not excessive.

The report of the State Tax Commission to the Governor for transmission to the Legislature, in August 1920, in which that Commission handed to the Legislature for its approval or disapproval the results of its work under the Revaluation Act, and which is relied upon by the plaintiffs as evidence (Seaboard's Record, p. 76 *et seq.*, 82), set forth in general terms the basis upon which the valuations of railroad properties were made. It said:

> "Under the new Interstate Commerce Act the Interstate Commerce Commission is required to make rates that will yield an average return of not less than five and one-half per cent upon the railroad lines as a whole, and to find the fair value of these properties as the basis for making the new rates. That Commission has not yet determined the basis on which the value of the railroad lines will be finally fixed. It will take several years to complete the physical valuation of all of these properties. Pending this final valuation the railroad lines have submitted to the Interstate Commerce Commission what is known as their investment accounts and have asked that this basis of value be used for determining the scales of rates and amount of return they are entitled to earn on their properties. It seems clear to us that the time has come when the value upon which a railroad or public utility is permitted to earn a return is the value upon which it should pay taxes to this State. In either case the purpose is

> to find the fair value of the property. So that generally our valuation of the railroad lines in this State is based upon a mileage proportion of their investment account, which they have asked the Interstate Commerce Commission to adopt as the basis for making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines, based upon the volume of business in this State greater than the average volume of traffic on their lines as a whole."

This was the report upon which the Legislature acted when it approved the valuations and adopted them as assessments, giving them effect as such. From it we see that the basis of valuation was to take the investment account of the entire road and allocate a mileage proportion of that to North Carolina. This of course arrived only at a value for tangible properties and took into account no intangible value of properties in North Carolina.

To arrive at this, then, we see from the affidavit of the Tax Commission (Southern Record, p. 96 *et seq.*) that several factors were considered.

Apportioning the investment account to North Carolina in the proportion that gross earnings of the railroad in that State bore to its total gross earnings gave a much larger valuation than apportioning it on the mileage basis.

The difference between North Carolina's mileage proportion and its gross earnings proportion of the investment account gave at once a definite indication of the difference between the mere value of tangible property in the State and the value of tangible property plus the intangible values inhering in that property in North Carolina, this in-

tangible value growing out of the greater volume of traffic in North Carolina than the average of the system, the existence of more double track in that State than the average of the system, the greater gross earnings per mile in North Carolina than the average gross earnings per mile of the entire system, and other factors tending to give a greater intangible value to properties in North Carolina than the average intangible value for the entire system.

Therefore the mileage proportion of the investment account was taken as the basic figure for tangible property value in the State, and the gross earnings proportion of the investment account was taken as the basic figure for intangible values in the State plus the value of the tangible property, or for total of tangible and intangible property in the State.

That total, the gross earnings proportion of the investment account, was not, however, taken as the final valuation of total properties in the State, but, except in the case of the Norfolk Southern, it was revised and reduced to the advantage of the railroad by a consideration of the stocks and bonds value, of the amount arrived at by capitalization at 6 per cent of the net earnings per year in North Carolina for a period of years, and of other factors. And it was this reduced amount that was taken as being the final value of total properties in the State.

The plaintiffs contended then, and now contend, that the straight mileage proportion of their investment account would show a proper valuation for property in North Carolina. This manifestly would not do because it would leave out of account all intangible values.

They contend that to the extent to which capitalization

of net earnings in the State was used it was wrong to use 6 per cent as the percentage for such capitalization. That contention is fully answered by the decision of this court in the case of *Railroad v. Greene,* 244 U. S., 522. Six per cent is the legal rate of interest in North Carolina.

Let us now examine the assessments of the interstate railroads involved in these suits, adopted and approved by the Legislature in 1920 upon the basis of valuation made as above shown by the State Tax Commission, first in the light of authority and second in the light of the contentions made by the plaintiffs, that we may see that there is no basis for the allegations that those assessments and taxes levied thereon are a burden on commerce or a violation of the commerce clause.

Although a State may not tax property outside its jurisdiction belonging to persons domiciled elsewhere, it may tax the property of such persons located in its jurisdiction.

Fargo v. Hart, 193 U. S., 490, 499.

It is not and cannot be doubted that each State of the Union may tax all property, real and personal, within its borders, belonging to persons or corporations, although employed in interstate or foreign commerce, provided the rights and powers of the National Government are not interfered with.

Delaware Railway Tax Cases, 18 Wall., 206, 232.
Telegraph Co. v. Texes, 105 U. S., 460, 464.
Western Union v. Massachusetts, 125 U. S., 530.
Marye v. B. & O. Railroad, 127 U. S., 117, 123, 124.
Leloup v. Mobile, 127 U. S., 640, 649.

Pullman's Palace Car Co. v. Pennsylvania, 141 U. S., 18.

Cleveland, etc., R. Co. v. Backus, 154 U. S., 439, 445.

Western Union v. Taggert, 163 U. S., 1, 14.

Although a State may not directly burden interstate commerce by imposing taxes upon the occupation of engaging in it, or upon the receipts received therefrom, or upon the privilege of engaging therein, yet it may tax property belonging to corporations or other persons engaged in such commerce. Whatever the particular form of the exaction, if it is essentially only property taxation, it will not be considered as falling within the inhibition of the Constitution. The fact that it is devoted to interstate commerce does not interfere with State taxation.

Pullman Palace Car Co. v. Pennsylvania, 141 U. S., 18.

Pittsburgh, etc., Co. v. Backus, 154 U. S., 421.

Postal Telegraph v. Adams, 155 U. S., 695, 696.

Adams Express Co. v. Ohio, 165 U. S., 194.

Adams Express Co. v. Ohio, 166 U. S., 218.

There can be no contention made that the *ad valorem* taxes here involved are anything other than property taxes pure and simple. They are not imposed on receipts from commerce; they are in no way a tax upon the privilege of engaging in interstate commerce. Their payment is not made a condition precedent to the right to engage in such commerce. They are in essence and fact property taxes and the plaintiffs only contend that they conflict with the commerce clause in that they are based on excessive assessments.

In *Adams Express Co. v. Ohio,* 165 U. S., at 220, the Supreme Court said:

> "Although the transportation of the subjects of interstate commerce, or the receipts received therefrom, or the occupation or business of carrying it on, cannot be directly subjected to State taxation, yet property belonging to corporations or companies engaged in such commerce may be; and whatever the particular form of the exaction, if it is essentially only property taxation, it will not be considered as falling within the inhibition of the Constitution. Corporations and companies engaged in interstate commerce should bear their proper proportion of the burdens of the governments under whose protection they conduct their operations, and taxation on property, collectible by ordinary means, does not affect interstate commerce otherwise than incidentally, as all business is affected by the necessity of contributing to the support of the government. *Postal Telegraph-Cable Co. v. Adams,* 155 U. S., 688."

It is settled by very many decisions of this court that in the valuing of railway property for taxation, including property of interstate railroads, the taxing officers may take into consideration the parts of the railroad lying in other States and consider the value of the system as a whole, in order to arrive at the value of the part within the taxing State. This is known as the Unit Rule of assessing.

State Railroad Tax Cases, 92 U. S., 575;
Delaware Railroad Tax, 18 Wall., 206;
Erie R. Co. v. Pennsylvania, 21 Wall., 492;
Western Union v. Massachusetts, 125 U. S., 530;
Pullman Palace Car Co. v. Pennsylvania, 141 U. S., 18;

Charlotte, etc., R. Co. v. Gibbs, 142 U. S., 386;
Columbus, etc., R. Co. v. Wright, 151 U. S., 470;
Pittsburgh, etc., Co. v. Backus, 154 U. S., 421;
Cleveland, etc., R. Co. v. Backus, 154 U. S., 439;
Adams Express Co. v. Kentucky, 166 U. S., 171.

Accordingly, it is the well settled rule of this court that the taxing officers of a State may make an assessment or valuation of the property of an interstate railroad taxable within the State upon a mileage basis, even though the property so assessed is used as an instrumentality of interstate commerce. That is, after arriving at a valuation of the whole system under the Unit Rule, they may take as being the proportion of that total property which is within the one State that proportion which the mileage in that State bears to the total mileage.

Western Union Tel. Co. v. Massachusetts, 125 U. S., 530;
Pullman Palace Car Co. v. Pennsylvania, 141 U. S., 18;
Maine v. Grand Trunk R. Co., 142 U. S., 217;
Charlotte, etc., Co. v. Gibbs, 142 U. S., 386;
Pittsburgh, etc., R. Co. v. Backus, 151 U. S., 421;
Western Union Tel. Co. v. Missouri, 190 U. S., 412;
Fargo v. Hart, 193 U. S., 490;
Adams Express Co. v. Ohio, 165 U. S., 194.

In the case last cited the court said:

"As to railroad, telegraph and sleeping-car companies, engaged in interstate commerce, it has often been held by this court that their property, in the

6
5

several States through which their lines or business extended, might be valued as a unit for the purposes of taxation, taking into consideration the uses to which it was put and all the elements making up aggregate value, and that a proportion of the whole fairly and properly ascertained might be taxed by the particular State, without violating any Federal restriction. (Citing many of the above cases.) * * * And it has been decided that a proper mode of ascertaining the assessable value of so much of the whole property as is situated in a particular State is, in the case of railroads, to take that part of the value of the entire road which is measured by the proportion of its length therein to the length of the whole. *Pittsburgh, etc., Railway v. Backus,* 154 U. S., 421. * * *

"The States through which the companies operate ought not to be compelled to content themselves with a valuation of separate pieces of property disconnected from the plant as an entirety, to the proportionate part of which they extend protection, and to the dividends of whose owners their citizens contribute."

As we have seen, the basis of the valuations upon which the assessments in question were made was a unit rule valuation of the tangible properties of the whole railroad, an apportionment of the result of a mileage proportion to North Carolina, and the adding of the value of intangible properties in that State arrived at by a consideration of the factors above enumerated.

A tax on an interstate railroad by the Unit Rule is a tax on property, not a privilege tax on the privilege of doing business.

Fargo v. Hart, 193 U. S., 490, 499, citing
Western Union v. Taggert, 163 U. S., 1, 21, 22.

In the case of *Fargo v. Hart, supra,* although the general applicability of the Unit Rule was declared, the particular tax involved was held invalid on the following peculiar and distinguishing facts: the subject of the tax was an express company, involving very much more attenuated relations than where there is a physical line of rail or wires; the company had no physical lines in the taxing State, Indiana; it had only $8,000 worth of property in the State; outside the State it had two millions of real property not used in the business at all, three millions of real property in all used in the business; one and one-half millions of personal property in New York not used in the business. Indiana undertook to tax the proportion of all this property that the mileage of the lines over which the express company operated in Indiana bore to all the mileage over which it operated everywhere, including ocean mileage. This one State assessed the company for twice the value of the total good-will of the company in all States. The courts, of course, held that this was not a mere case of overvaluation, but was unconstitutional in principle. Even in this strong case three judges dissented, holding that the Unit Rule was applicable.

We are here dealing, not with the attenuated relations of an express company, having no physical lines in the State, but with the organic relations of railway companies having very valuable portions of their lines and physical properties, essential connecting links in their entire systems, in the State of North Carolina.

It is perfectly competent for the State to assess all the properties of a railroad within the State as a unit, and then to allocate this assessment to the various counties through

which it runs, on a mileage basis, for *ad valorem* taxation by those counties.

Union Pacific R. Co. v. Christensen, 275 Fed., 6, 11.

That is the way in which railroads are subjected to property taxation in North Carolina.

We have seen that the assessments complained of in these suits include not only the valuation of the tangible properties of the railroads in North Carolina, but a valuation of the intangible values inhering in the use of those properties as part of an organic whole, in the more than average productiveness of the portion of the lines lying in North Carolina as shown by higher gross earnings per mile in that State, and in other factors.

Because the Machinery Act, in Section 64, uses the word "franchise" to describe this intangible property value, some effort is made in the bills of complaint to confuse this concept with the franchise tax, which is a privilege tax, not a property tax, a tax upon the privilege of doing intrastate commerce within the State. "Franchise tax," as used in Section 82 (6½) of the Revenue Act means the privilege tax, the validity of which we shall consider in Part II of this brief. As used in the Machinery Act, the word franchise is simply used to refer to intangible property.

Frequently, in tax statutes and in decisions of the courts, the word "franchise" is used to refer to intangible property values flowing from the franchise to be a railroad corporation. And a tax on that franchise—that is, on intangible property—is a property tax and clearly distinct from a franchise or privilege tax on the right or franchise *to do*.

The word franchise, as meaning intangible property, and

as distinct from the adjective qualifying a privilege tax, was defined in *State Railroad Tax Cases,* 92 U. S., 573, to be "The value of the right to use this tangible property in a special manner for the purposes of gain."

In *Columbus Southern Railway Company v. Wright,* 151 U. S., page 470, the court thus referred to the means of ascertaining the value of railroad property:

> "The value of the roadway at any given time is not the original cost, nor, *a fortiori,* its ultimate cost after years of expenditure in repairs and improvements. On the other hand, its value cannot be determined by ascertaining the market price of adjacent lands, and adding the value of the cross-ties, rails, and spikes. The value of land depends largely upon the use to which it can be put, and the character of the improvements upon it. The assessable value, for taxation, of a railroad track can only be determined by looking at the elements on which the financial condition of the company depends, its traffic, as evidenced by the rolling stock and gross earnings in connection with its capital stock."

It was those very elements of intangible value which were looked to in arriving at that portion of the assessments complained of in these suits.

The franchise of a corporation, although that franchise is the business of interstate commerce, is, as a part of its property, subject to State taxation, providing at least the franchise is not derived from the United States.

> *Atlantic Telegraph Co. v. Philadelphia,* 190 U. S., 160, cases cited at 163.

There are two separate kinds of corporate franchise, both of which are taxable by the State, the franchise to be, and

the franchise to do; the franchise to exist as a corporation, and the franchise to do business as a corporation.

Adams Express Co. v. Ohio, 166 U. S., at 244.

The franchise or privilege of being a corporation is deemed personal property, and is subject to separate taxation as property in addition to taxation on tangible property. The right of the States to tax it as property has been recognized by this court and by State courts in instances without number.

Horn Silver Mining Co. v. New York, 143 U. S., 305.

It is well settled that in so far as the property constituting the line of an interstate carrier in a State is regularly or habitually used or employed in that State, it is within the taxing power of that State, both the tangible and the intangible propery, although it is chiefly devoted or applied to interstate transportation.

Cudahy Packing Co. v. Minnesota, 246 U. S., 450;
Pullman Co. v. Pennsylvania, 141 U. S., 18;
Adams Express Co. v. Ohio, 165 U. S., 194;
Adams Express Co. v. Ohio, 166 U. S., 185;
American Ref. Co. v. Hall, 174 U. S., 70;
Union Ref. Co. v. Lynch, 177 U. S., 149.

As to the power to tax intangible properties within the State of an interstate carrier, this court said in *Adams Express Co. v. Ohio,* 166 U. S., 219:

> "It is as certainly property, and property of value, as if it were a building or a steamboat, and is as justly subject to taxation. It matters not in what this property consists—whether privileges, corporate fran-

chises, contracts, or obligations. It is enough that it is property which, though intangible, exists, which has value, produces income, and passes current in the markets of the world. To ignore this intangible property, or to hold that it is not subject to taxation at its accepted value, is to eliminate from the reach of the taxing power a large portion of the wealth of the country."

The immunity of an individual or corporation engaged in interstate commerce from State regulation does not prevent a State from imposing ordinary property taxes on property having a situs within its territory and employed in interstate commerce; and the franchise of a corporation, although that franchise be the business of interstate commerce, is, as a part of its property, subject to State taxation, provided it be not a franchise derived from the United States.

Atlantic and Pac. Tel. Co. v. Philadelphia, 190 U. S., 160, 163;

U. S. Glue Co. v. Oak Creek, 247 U. S., 321, 327;

Underwood Typewriter Co. v. Chamberlain, 254 U. S., 113.

In the *Underwood Typewriter Case, supra,* it was said (pp. 119-120):

"It is contended that the tax burdens interstate commerce and hence is void, under Section 8, Article I, of the Federal Constitution. Payment of the tax is not made a condition precedent to the right of the corporation to carry on business, including interstate business. Its enforcement is left to the ordinary means of collecting taxes. St. Louis, etc., Co. *v.* Arkansas, 235 U. S., 364; Atlantic and Pacific Tel. Co.

> *v.* Philadelphia, 190 U. S., 160, 163. The statute is, therefore, not open to the objection that it compels the company to pay for the privilege of engaging in interstate commerce. A tax is not obnoxious to the commerce clause merely because imposed upon property used in interstate commerce, even if it takes the form of a tax for the privilege of exercising its franchise within the State. Postal Tel. Cable Co. *v.* Adams, 155 U. S., 688, 695."

Under the laws of North Carolina this intangible property, this franchise in the sense of property, is taxed as property under the general *ad valorem* property tax which goes to the support of counties, cities, towns and other political subdivisions of the State. The franchise in the sense of the privilege of engaging in a particular sort of business, that is strictly intrastate commerce carried on wholly within the State, is taxed under the privilege tax whose validity is a separate matter, considered in part II of this brief, and the avails of which privilege tax go to the support of the State Government.

The principal contention of the plaintiffs as to the assessment of their intangible property as part of their total property assessment is that they have adduced evidence that they are not now earning such a percentage of return on their invested capital as would justify a finding that their intangible property has any value, or has such value as that at which it is assessed for taxation. And a large part of their effort to prove that their assessments are too high and therefore unconstitutional is their effort to prove that their assessments are not justified by their showing as to what their earnings are.

But the law is clear that the franchise of a railroad considered as part of its intangible property is not necessarily to be regarded as valueless merely because its present earnings are not sufficient to pay more than high grade investment, or even to pay the operating expenses.

State Railroad Tax Cases, 92 U. S., 575, 606.
Ohio Tax Cases, 232 U. S., 576, 590.

In the *State Railroad Tax Cases* the board of equalization had assessed the capital stock and franchise, the intangible property, of a railroad at $2,003,415, and its tangible property at $2,629,367. The company showed that it was at the time earning practically nothing above operating expenses and contended that since it was earning no net profit, there was no intangible property value. That contention was disposed of by Mr. Justice Miller in language which was specifically approved in the late *Ohio Tax Cases.* He said:

> "This sounds plausible, but it is nothing more. Concede for the present that the capital stock is sunk and is of no value; concede that the funded debt of the company has at present no market value, or is unsalable—there remains what is valued as worth over $2,600,000 of real and personal property, which, like all other property of individuals, ought to pay its proportion of the public burdens. There also remains the value of the franchise, which is not destroyed by the circumstance that the road does not pay interest on its debt. Does anybody believe that this debt is of no value—that the holders of it attach no value to this franchise? Are they willing to give up the right to operate the road, to receive freights

and fares, to endeavor to make it pay something more than the mere value of the personal property of the track, the depots, the grounds, the rolling stock, and other tangible property? Is it supposed by any one that they intend or will ever sell these separately or apart from the right to use them as a railroad? Why do not the bondholders, sell all these things under their mortgage at auction as a man would sell town lots and household furniture, and horses and carriages? The reason is too clear to escape observation. It is because in the case of the railroad there is attached to all this property, and goes with it, a privilege, a right to use it through the whole extent of the righest counties of Illinois, in transporting persons and property, in a manner which adds immensely to its value when considered as so much iron, so much land, and so much personal property. By virtue of this privilege or franchise, this is all aggregated into a unit, well adapted to make money, by its use in that way, with a chartered right to use it for that purpose.

"It is this *franchise* which the Legislature of Illinois intended to tax, which it had a right to tax; and in taxing it committed no injustice, if it was fairly assessed, though the corporation which holds it may be so *utterly bankrupt* that it must necessarily pass from it into other hands. In those hands, disembarrassed of its overweight of debt, who shall say that it is not worth $2,000,000, and who shall say that such is not the real value now of this franchise?"

The law as announced in those cases is sufficient answer to the contention of the plaintiffs that their assessments are unconstitutional because they cannot be checked by com-

parison with the market values of their stocks and bonds and with their earnings at the present or for the period of economic disturbance through which this country has been passing in recent years.

Some complaint is made by several of the plaintiffs that when they were notified of the total amounts of their assessments, upon which total *ad valorem* taxes are levied, they were not notified as to what proportion of that total amount represented valuation of tangible properties and what proportion intangible properties.

They contend that because the Machinery Act, in the often-quoted section 64, directs a separate valuation of tangible properties and intangible properties, therefore their assessments are illegal because they were not notified as to what that separation or division was.

A complete answer to that contention is that the assessments here complained of were not made under the provisions of the Machinery Act but under those of the Revaluation Act of 1919 which contained no direction whatever to make separate valuations of these component elements, but simply directed a valuation of the whole property of railroads.

Even, however, if these assessments had been made under the terms of the Machinery Act, nothing in that act directed that the taxpayer must be informed as to what part of the assessment represented tangible, and what part intangible property. There is no showing in these suits that any one of the plaintiffs made any demand before it brought its suit that it be notified of such apportionment to tangible and intangible properties, and there is no showing that any one of the plaintiffs ever made any report or gave any informa-

tion to any of the officers of the State to enable them to arrive at such an apportionment.

That the valuation of railroad property for taxation is made as a whole, instead of disintegrating it into its component parts and ascribing to each its fraction of value, does not affect the validity of the valuation.

Brooklyn, etc., R. Co. v. New York, 199 U. S., 52.
Western Union v. Taggert, 163 U. S., 1, 28.

In the last cited case it was said:

> "The bill further alleges that the State Board of Tax Commissioners did not attempt to specify or describe the plaintiff's real estate, machinery, and appliances subject to local taxation. But the statute did not require of them any such specification or description; nor does the plaintiff appear to have requested them, or to have done anything toward assisting them to do so."

And again all of these contentions by the plaintiffs as to failure to separate the total assessment into tangible and intangible values, and to notify them of such separation, address themselves to no question of constitutionality of the assessments but to the mere question of their *legality* under statutes of the State, and find their complete answer in the fact which we have been at pains to show that the Legislature of North Carolina by statutory enactment specifically approved these very valuations and made them assessments, the basis of taxation. After that act of the Legislature approving everything that was done in arriving at the valuations of which plaintiffs complain there can be no question of the *legality* of the resulting assessments.

Aside from what we have already considered the plaintiffs assert only three reasons why they contend the assessments should be deemed so excessive as to be a burden on interstate commerce, and unconstitutional as such: *first*, because of the system of accounting used in allocating expenses and revenues to North Carolina; *second*, because they have, as they contend, important terminals outside North Carolina larger than terminals in that State, and *third*, because the North Carolina assessments were not controlled by and reduced to the tentative figures of the Interstate Commerce Commission. We shall consider these three contentions of *seriatim*.

First, as to the question of the accounting system.

The allegations of the Southern on this point may be taken as typical. It alleges (Southern Record, 10-12) that its assessment was arrived at by taking its average net annual revenue in North Carolina for five years, capitalizing it at six per cent, and taking the result as the assessment. It alleges that under the method of accounting now employed by it (Southern Railway Company) operating expenses allocated to North Carolina are understated and operating revenues allocated to that State are overstated, because the allocation of operating expenses is made arbitrarily and not with mathematical accuracy. It contends therefore that the figures reported by it to the State Tax Commission, when that body was working on these valuations in 1919-1920 under the Revaluation Act, as being its average annual net income were much higher than they would have been if allocation under its accounting system had been mathematically accurate, and that, therefore, the Southern's assessment, which happens to equal the result

which would be produced by capitalizing at 6 per cent that annual net income, is not accurate, is excessive, and therefore a burden on interstate commerce.

The first answer to this contention is that the assessments were not arrived at by simply capitalizing at six per cent the net annual revenue.

As we have seen the Tax Commission, in doing its tentative work of valuation under the Revaluation Act, considered a great number of factors other than capitalization of net income. They took first a mileage proportion of the investment account. That gave a figure less than the final valuation. They took a gross earnings proportion of the investment account. That gave a figure considerably higher than the final valuation. Then they considered the factors and modes of capitalization of net income, the market values of stocks and bonds, the amount of double track and the volume of traffic in North Carolina greater than the average of the system, and revised these investment account figures by a consideration of all those modes and factors, reducing them from a higher figure to the valuation finally arrived at.

In the case of the Southern and one or two ther plaintiffs, that investment account figure was reduced to the exact amount which might have been originally arrived at by capitalization of net income. Certainly, however, the plaintiff cannot complain of the use of a factor which reduced its assessed value from what would without that factor have been a higher amount.

But as to the merits of the accounting system itself upon the basis of which was determined the net annual income, and which was therefore used in so far as the factor of capitalization of net income was considered at all, what sort of case have the plaintiffs made before a court of equity?

This figure of net annual income, in so far as used at all, was in each case taken from the railroad's own reports to the Tax Commission, based upon the railroad's own system of accounting, and its own data kept in accordance with that system.

The system of accounting of which they complain is in each case the railroad's own system, invented by the railroad, and the best system that the railroad has thus far been able to devise. *This is admitted.* Again the system used is not only the plaintiff's own system in each case, but is the only system in existence. If the plaintiff didn't have the correct or the best system of accounting and allocation between States, how can it complain that the State adopted the railroad's own system?

The lack of equity in this contention of the plaintiffs is shown in strong light when we see that their own officers swear, as the only excuse for not having a more accurate system of accounting, that it could not be done without great expense. (J. B. Duke's affidavit, Southern Record, p. 80, middle.)

It appears, therefore, that the system of accounting used by the railroads, and used by the State of North Carolina in so far as the capitalization of income plan was followed in arriving at these assessments, is the best system available. What the best system is is a matter of opinion which, like opinions as to property value, is beyond the power of a court to review. All systems and methods partake of the imperfections of human nature and assessments for taxation cannot be checked by any hard and fast rule.

Second, as to the question of more expensive terminals outside North Carolina.

This contention, like the one we have just discussed, bears only on the question of allocation of operating expenses and revenues to North Carolina and to the ascertainment, under the plaintiffs' own system of accounting, of net annual income in North Carolina. It bears therefore only on the question of whether the plaintiff's system of accounting allocates sufficient expenses to North Carolina. This again is a matter of the railroads' own concern. If it would cost them too much to invent a more accurate system of accounting, they can not complain that North Carolina has not done it for them before trying to levy a property tax.

In addition, the defendants in these suits allege that large terminals outside of North Carolina are more than counterbalanced by the great number of smaller but important terminals and shipping points in North Carolina; that North Carolina is a richer State than its contiguous neighbors, a State of many comparatively small but prosperous towns rather than a State of one or two important large cities such as Virginia or Georgia or Tennessee. They contend that a very large proportion of the most productive traffic over the plaintiff railroads initiates or terminates at points within North Carolina, resulting in the charging to North Carolina of all the operating expenses of that traffic, while only a very small proportion of the operating revenues of that traffic are allocated to North Carolina on account of the short mileage in that State as compared with the total long trans-State shipment. They contend that this, their own accounting system, of which the plaintiffs are here complaining, in the long run evens up and gives to each State the most accurate allocation of net operating revenues which these very capable railroads have been able to devise.

The defendants contend, in addition, that terminal expenses outside of North Carolina are still further outbalanced by the much more rugged nature of the country through which the railroads run in North Carolina. It costs more to build railroads in North Carolina than in Virginia, South Carolina, and Georgia. North Carolina is not, as this court said of North Dakota in the case of *Wallace v. Hines,* 253 U. S., at page 69, " a State of plains," but is, as this court judicially knows, a State containing the most rugged terrain east of the Rocky Mountains. Railroad systems and properties are more valuable in a State like North Carolina than in a State like North Dakota.

The defendants further contend that North Carolina is a much richer and more prosperous State than the average of the States through which the interstate plaintiffs run, that it pays more taxes to the Federal Government, that it has more prosperous agriculture and manufactures, and that property values are relatively higher in that State than in others traversed by the plaintiffs.

The Southern in particular refers to the fact that its lines through North Carolina form a narrow funnel through which great volumes of trans-State shipping are poured from one end of its system to the other. The defendants in answer call attention to the great volumes of traffic originating in North Carolina throughout the great manufacturing belt of the Piedmont country, tobacco from Winston-Salem, granite from Mount Airy, furniture from High Point known as the Grand Rapids of the South, and cotton manufactures from all over the Piedmont section of the State. The defendants contend that the very "funnel" or "intestinal" character of the plaintiffs' lines through North Carolina shows the rela-

tive value of that portion of their lines in the whole system. The *antennæ*, the extremities of the system, might be cut off and incapacitated and the railroad still function, but if the heart of the system, located in North Carolina, were incapacitated the usefulness of the system would be destroyed.

All these considerations, however, bear only upon questions of opinion and judgment as to facts. The facts as to values are within the scope of power of taxing authorities, but they are not facts upon which courts exercise their judgment. These considerations all bear on the question whether as matter of fact the assessments are correct, and as we have seen that question cannot be a constitutional question.

Third, as to the tentative figures of the Interstate Commerce Commission.

The plaintiffs contend that their assessments are burdens on interstate commerce because not controlled by and reduced to what are known as the tentative figures of the Interstate Commerce Commission. This we think is the weakest of all the contentions put forward by the plaintiffs in these suits.

The Interstate Commerce Commission directed its engineers to make a physical valuation of railroads to be used by that commission for rate making purposes. This physical valuation it will take years to complete. It is far from complete now. In the meantime the engineers have made certain speculative estimates which they call tentative figures. It is these which plaintiffs contend should have been taken as the value of their properties for taxation.

These tentative figures are, in the first place, *tentative*. In the second place, they represent only physical property—no intangible value. In the third place, they are based on price

levels of 1914. In the fourth place, they are based on inventory of property as made in 1916. In the fifth place, the final figures of the Commerce Commission's engineers may be entirely different from these tentative figures. They afford no basis whatever upon which a court of equity could hold the North Carolina assessments to be a burden on interstate commerce or a violation of any constitutional provision.

As to those tentative figures the defendants in their answer say (Southern Record, pp. 43-44):

> "6. Answering the allegations of article six of the complaint as to the so-called tentative figures of the Interstate Commerce Commission, defendants say that these figures are purely tentative and in no way final or binding. They are figures arrived at by engineers of that Commission from an estimation of the value of property of the plaintiff and other railroads based on an inventory as of June 30, 1916, and on prices prevailing June 30, 1914. The price level in general and particularly the cost of railroad construction have very greatly increased since 1914. As an illustration of this, reference is made to the report of the plaintiff to its stockholders for the year ending December 31, 1919, being its 25th annual report, and to page five thereof, wherein the plaintiff reports that the work of laying a double track on a revised grade of plaintiff's line between Washington and Atlanta had been finished; that as originally contracted and estimated this work was to cost $34,838,000, but that the actual cost of it was $52,134,000, or about fifty per cent greater. This latter sum represents the actual cost of construction of six hundred and twenty-five miles of second track, the cost of laying which is less than that of laying first track, and shows that the said second track between Wash-

ington and Atlanta cost $82,884.00 a mile on an average. The year 1914, upon the price level of which the said tentative figures of the Interstate Commerce Commission are based, was actually a subnormal period as to prices with relation both to time before and time after the said year. Therefore, the said tentative figures in no way represent the actual cost of replacement of the tangible property of the plaintiff as of the dates 1920 and 1921.

In addition, these tentative figures do not include the intangible property of the plaintiff consisting of the franchise to be a corporation, the franchise to do business as a corporation, the going concern value, the good-will and other intangible property subject to taxation in North Carolina."

And the members of the former State Tax Commission in their affidavit (Southern Record, p. 100) state:

"And affiants state of their own knowledge that the said prices prevailing in 1914 as to material, labor and all costs of railroad construction, were abnormally low, that since that time such prices have greatly increased, and that in 1919 and in 1920 the said prices of labor, materials, and all things going into the construction of railroads were very much higher than those of 1914 upon which the said tentative figures of the Interstate Commerce Commission were based. In the opinion of the affiants the said tentative figures in no way furnish a proper index or test of the value of the properties of railroads in North Carolina in 1919 and 1920."

But why, in any case, should the opinion of the engineers of the Interstate Commerce Commission as to the fact of

value have any more binding force with the courts than the opinion of the State Tax Commission approved by the Legislature of North Carolina, when the courts cannot concern themselves with the question of the correctness of taxation assessments but only with fraud, intentional and deliberate overassessment, or clear employment of a fundamentally unconstitutional principle of assessment?

Affirmatively, we show that these assessments were based upon the tentative work of the State Tax Commission—a body of expert tax assessors, who sought all the evidence they could get—and was enacted as law by the Legislature after due consideration. There is more than a presumption of the correctness of these assessments. They can only be attacked for fraud or fundamentally wrong principle.

Finally, the action of the plaintiffs and of the Interstate Commerce Commission with reference to rates is conclusive that the assessments are not excessive. The case of the Southern will illustrate all. The defendants charged in the answers (Southern Record, p. 45) that while that plaintiff was contending in North Carolina that its property in that State was worth only around 60 millions for taxation, it was at the same time contending before the Interstate Commerce Commission that its properties for purposes of allowance of rates were of such value as, allocated to North Carolina on the gross-earnings basis, would give a value for the property of that plaintiff in this State of 111 millions of dollars.

The only answer which the plaintiffs attempted to make to this at the hearing in the District Court was, that no such allocation was actually made. We do not say it was made. We make it for ourselves. What we say is, that the total property value submitted to the Interstate Commerce Com-

mission in Docket ex parte, 74, was such a figure as that, upon allocation thereof to North Carolina on the gross-earnings basis, the Southern would have 111 millions of property in this State. This is not denied. It is only denied that the division and allocation was made. The rate increase was granted to all railroads in the southeastern group of railroads. But it was based on the book accounts of those roads which give, in the case of the Southern, allocated as aforesaid, 111 millions to North Carolina.

So we see that the plaintiffs have shown no excessiveness in their assessments as matter of fact and that they have established no case of burden on interstate commerce under the law.

Their whole argument under this head comes down to a contention of fact that their assessments are higher than the actual value of their property and a contention of law that the fact that their assessments are excessive necessarily results in importing into North Carolina from abroad taxable values or the taxing of property beyond the jurisdiction, and amounts to a burden on interstate commerce.

And we refer, in answer to this contention, again to the language of this court in the case of *Western Union v. Taggert,* 163 U. S., 1, 36, which language was quoted and approved in *Adams Express Co. v. Ohio,* 165 U. S., at 229:

> "The allegation that 'the attempted and pretended valuation of complainant's said property by said State Board of Tax Commissioners, in manner aforesaid,' 'necessarily includes, and does in fact include, values which are not a part of the true cash value of the property of complainant in Indiana,' is but equivalent to an assertion that the decision of the tax

commissioners upon the question of fact committed by the statute to their determination was erroneous. As said by this court in *Pittsburgh, etc., v. Backus*, above cited, 'Whenever a question of fact is thus submitted to the determination of a special tribunal, its decision creates something more than a mere presumption of fact; and if such determination comes into inquiry before the courts, it cannot be overthrown by evidence going only to show that the fact was otherwise than as found and determined.'"

We contend, therefore, that the plaintiffs have failed to show that the assessments complained of, in their amount, violate either State or Federal Constitutions and that they have not shown any equity to support their prayer for injunction to restrain collection of *ad valorem* taxes on the ground of excessiveness of the assessments upon which such taxes are levied, or the method by which such assessments were made.

VII.

The plaintiffs have made out no case of unconstitutionality of assessments for discrimination under either State or Federal Constitution.

1. *The contentions of the plaintiffs as to discrimination.*

It will be remembered that in 1921 each of the plaintiffs petitioned the newly created office of Commissioner of Revenue to reduce its quadrennial assessment, made under the Revaluation Act and approved by the Legislature of 1920, and that after granting a hearing to each of them, at which they introduced evidence and made arguments and filed

briefs, and after full consideration of each case, the Commissioner decided that none of the plaintiffs except the Norfolk Southern had shown that its assessment was higher than the value of its property in 1921 and except in that one case refused to make any reduction.

In the case of the Norfolk Southern he did decide that the assessment approved by the Legislature and adopted for four years, to-wit, $27,023,462,, was in excess of the true value of properties in North Carolina and he reduced it to $22,840,932. The Norfolk Southern makes no point of discrimination as to *ad valorem* taxes but rests its prayer for injunction as to those taxes purely on allegations that even as reduced its assessment was and is excessive. Under the principles we have already discussed it has failed, with all the other plaintiffs, to make out any case for equitable relief against the *ad valorem* taxes. In parts I and IX of this brief we shall consider our affirmative proposition that the Norfolk Southern is fixed with consent to its assessment. As to discrimination in *ad valorem* taxation we need consider only the other four plaintiffs.

We have seen that by the revaluation of all property in North Carolina made in 1919-1920 under the Revaluation Act real property in general was raised to about four times the 1919 assessment and railroad property was not quite doubled.

On page 78 of the Seaboard Record will be found a compiled table showing the increase of the revaluation assessment over the 1919 assessment, in totals, as to various classes of property and taxpayers which shows clearly that, far from railroads being subjected to any unusual or extraordinary or relatively burdensome increase, their assessment was raised less than that of any other class of taxpayer.

Quotation of a few of the items from that table will show strikingly what is the basis in fact upon which the plaintiffs' contentions as to discrimination must rest. Railroad properties were raised from $125,417,618 to $250,587,158, an increase of $125,169,540, or less than doubled. Real property in general in the State was raised from $506,808,394 to $2,006,124,997, an increase of $1,499,316,603, or nearly quadrupled. Personal property was practically doubled. Cotton mills were raised from $58,266,591 to $205,581,304, an increase of $147,314,713, or nearly quadrupled. Woodworking and furniture factories were raised from $8,053,188 to $24,728,628, or more than tripled. Power companies were raised from $8,331,112 to $56,484,094, or increased nearly seven times.

As we have seen a depression in 1920-1921 followed the revaluation, affecting particularly the values of farm products and the values of real property in general as influenced immediately thereby. In many cases land was found to be assessed at much more than its possible sale value. Farmers were suffering great losses. At the same time railroads were granted by the Interstate Commerce Commission a 25 per cent increase of freight rates and a 20 per cent increase of passenger rates.

As a result of the widespread depression of real estate values and the belief throughout the State that much real property was assessed above market value under the revaluation, the Machinery Act of 1921 authorized county boards to convene to determine whether real estate in general in the individual counties was assessed at more than value and if so to reduce, by an average percentage reduc-

tion, the assessments for the county. Another provision of the law authorized correction of individual cases, upon petition of the property owner, so that each taxpayer's property might be assessed at true value.

In the same statute, Section 28 (*g*), to which we have already referred, taxpayers whose property was not locally valued but centrally valued by the State Tax Commission (replaced in 1921 by Commissioner of Revenue) were authorized to petition the Commissioner of Revenue for a reduction of their revaluation assessment.

In 67 of the counties of the State the county boards made an average percentage reduction of real property in the State. In the other 33 counties no reduction was made. Some of the counties through which the plaintiffs' lines run were counties in which reductions were made, some were not. The Commissioner of Revenue, upon their petition and after full hearing, decided that the plaintiffs' railroad property assessments should not be reduced.

The contention of the plaintiffs as to discrimination, as set forth specifically in their complaints, is this: In 67 counties of the State, some of them counties through which their lines run, county boards reduced real property in general by an average percentage reduction; this was done by reason of depression which reduced property values in the State in 1921 below what they were in 1920; the Commissioner of Revenue refused to reduce their assessments; their property was worth less in 1921 than in 1920; this refusal to reduce their assessments, when 67 counties reduced locally assessed real estate assessments, constitutes discrimination, and renders their assessments as they stand for 1921 unconstitutional, as being in conflict with the uniformity

clause of the State Constitution and the equal protection clause of the Fourteenth Amendment.

Upon the hearing in the District Courts the plaintiffs endeavored to argue an entirely different contention of discrimination, not only that the refusal of the Commissioner of Revenue to reduce their assessments in the proportion that real property was reduced in certain counties constituted discrimination, but that even if the railroad property was assessed at actual value both in 1920 and 1921 still other real property in the State was assessed on an average at less than actual value and had been for years, and that this was proved by certain tables of sales prices gleaned from deeds compared with tax assessment values.

Not one of the plaintiffs put any such allegation of discrimination as that latter contention in its bill of complaint. The only allegation of discrimination in any complaint is directed against the Commissioner of Revenue and charges him with discriminating in refusing to reduce railroad assessments. In no complaint is it alleged that local assessors have discriminated against railroads by assessing real property in general at less than its value or at a less percentage of its value than that at which railroads are centrally assessed.

It would seem to us to be a sufficient answer to any attempt of the plaintiffs to make the latter argument that there is no allegation in the bill to support such a contention and that the only question of discrimination in these suits arises from the action of the Commissioner of Revenue in refusing to reduce the assessments of four of the plaintiffs in 1921.

2. *There are no allegations in the complaints sufficient to raise any constitutional question of discrimination.*

There is no allegation in either complaint of any intention to discriminate, either on the part of the Commissioner of Revenue or on the part of local assessors or local boards of review.

There is no allegation of fraud.

There is no allegation of any deliberate or systematic or persistent discrimination or of any scheme or agreement between taxing or assessing officials or boards.

There is no allegation or intimation anywhere in the complaints that the action of the Commissioner of Revenue in refusing to reduce the assessments of the plaintiffs was anything other than a perfectly honest and *bona fide* exercise of his discretion.

Taking the allegations most strongly for the plaintiffs they amount to nothing more than a charge that the decision of the Commissioner of Revenue not to reduce plaintiffs' assessment was an erroneous exercise of his official discretion and was contrary to the weight of the evidence submitted to him.

The law is perfectly clear that such allegations are not sufficient to raise any constitutional question of discrimination or to serve as the basis for a prayer for injunction to restrain the collection of taxes.

It is well settled that mere errors of judgment by officials will not support a claim of discrimination. There must be something more—something which in effect amounts to an intentional violation of the essential principle of practical uniformity. The good faith of such officers and the validity

of their actions are presumed; when assailed the burden of proof is upon the complaining party.

Head Money Cases, 112 U. S. 580, 595;
Pittsburgh, etc., Ry. Co. v. Backus, 154 U. S. 421, 435;
Maish v. Arizona, 164 U. S. 599, 611;
Adams Express Co. v. Ohio, 165 U. S. 194, 229;
New York State v. Barker, 179 U. S. 279, 284, 285;
Coulter v. Louisville, etc., R. Co., 196 U. S. 599, 608;
Chicago, etc., R. Co. v. Babcock, 204 U. S. 585, 597;
Sunday Lake Iron Co. v. Wakefield, 247 U. S. 350, 353.

To set aside, as discriminatory, assessments for taxation, therefore, it must appear that the discrimination in favor of another class or other classes of property, as against the party complaining, was intentional, systematic, and persistent, and was the result of a scheme or agreement among taxing officers to apply a different principle of valuation. Differences in opinion or judgment leading to discriminatory valuations are not reviewable in the courts. The intentional, systematic, and persistent scheme must appear from pleadings and proofs.

Chicago, etc., R. Co. v. Babcock, 204 U. S. 585;
Coulter v. Louisville, etc., R. Co., 196 U. S. 599;
Louisville, etc., R. Co. v. Coulter, 131 Fed. 282;
Union Pac. R. Co. v. Christensen, 275 Fed. 6, 9.

In the *Chicago R. Co Case, supra,* the court said:

> "It is said that this valuation is absurd and due to misunderstanding of the table (a table of market values of stocks and bonds). But we have nothing

to do with complaints of that nature, or with anything less than fraud, or a clear adoption of a fundamentally wrong principle. * * *

"A point less pressed than the foregoing was that the other property in the State was greatly undervalued, and that thus the rule of uniformity prescribed by the Constitution of Nebraska had been violated. Upon this matter it is enough to say that no scheme or agreement on the part of the county assessors, who taxed the other property, was shown, or on the part of the Board of Equalization and Assessment, and to refer to *Coulter v. Louisville & Nashville R. Co.*, 196 U. S. 599."

This language of the court was used in a case in which the allegations were exceedingly strong. The railroads alleged that the board, induced by political clamor and fear, had arbitrarily fixed excessive assessments and had included property beyond the jurisdiction of the State, thus depriving them of their property without due process of law. The plaintiffs further specifically charged political duress and that the excessive valuations were the result of a consequent scheme of fraud.

The opinion by Mr. Justice Holmes in the case of *Coulter v. Louisville & Nashville R. Co., supra,* is a full discussion of these principles, and particularly of their application to all such evidence of discriminatory valuations as is sought to be adduced in the present cases. The bills were dismissed because the plaintiffs had failed to prove a fraudulent scheme, and a great mass of evidence of undervaluation of property other than railroad property, settled habit recognized by the Legislature, rapid increase in railroad assessments and slow increase for other real estate, tabulated statements of

sales in different counties, and cross-examination of members of the boards to show confusion of their minds, were all discredited by the court and held not to show a fraudulent scheme. This case is conclusive on the questions of discrimination and of evidence thereof.

It is only where there is allegation and proof of an intentional, deliberate, systematic, and persistent discrimination in the principle upon which the tax is assessed, as where railroad property is intentionally, deliberately, systematically, and persistently assessed at a higher percentage of its estimated value than is other property, that the enforcement of property taxes may be restrained as discriminatory.

Sunday Lake Iron Co. v. Wakefield, 247 U. S., 350.
Greene v. Louisville, etc., R. Co., 244 U. S., 499.

But a complaint that the plaintiffs' property was assessed at 100 per cent by an assessing board, while real estate in general was assessed at only one-third its value, presents no violation of the Fourteenth Amendment and no ground for judicial relief where a deliberate purpose of the assessing board so to discriminate is not clearly established, and where the discrimination may, therefore, be attributed to an honest mistake of judgment and lack of time and evidence for making general valuation.

Sunday Lake Iron Co. v. Wakefield, 247 U. S., 350.

In these cases the plaintiffs have not only failed to introduce any evidence of fraud, deliberate or intentional discrimination, or agreement or scheme on the part of taxing officials or boards, but they have not even made in their complaints those allegations which are absolutely necessary

to give them any standing in a court of equity to complain of taxation assessments as discriminatory.

3. *In Fact and in Law There has Been no Discrimination Against the Plaintiffs as to ad Valorem Assessments.*

Absolute uniformity in taxation is an unattainable ideal, and in all systems of taxation there are inequalities and hardships which human administration cannot avoid and which cannot be relieved against by the courts.

State Railroad Tax Cases, 92 U. S., at 612.
Kentucky Railroad Tax Cases, 115 U. S., 337.
Adams Express Co. v. Ohio, 165 U. S., 194.
Adams Express Co. v. Ohio, 166 U. S., 185.
Billings v. United States, 232 U. S., 261.

In *State Railroad Tax Cases, supra,* it was said:

> "Perfect equality and perfect uniformity of taxation is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect. And when we come to its application to the property of all the citizens, in all the localities of a large State like Illinois, the application being made by men whose judgments and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfections of human nature, and of the evidence on which human judgment is founded." Citing, *inter alia, Tappan v. Merchants Bank,* 19 Wall., 504.

The Federal Constitution imposes no restraints on the States in regard to unequal taxation.

Davidson v. New Orleans, 96 U. S., 97, 105.

There is no general supervision on the part of the Nation over State taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign, both as to objects and methods.

Michigan Central Railroad v. Powers, 201 U. S., 245, 292.

There can be no question, after the frequent and uniform decisions of this court, that it was not designed by the Fourteenth Amendment to the Constitution to prevent a State from changing its system of taxation in all proper and reasonable ways, nor to compel the States to adopt an iron-clad rule of equality, to prevent the classification of property for purposes of taxation, or the imposition of different rates upon different classes. It is enough that there is no discrimination in favor of one as against another of the same class, and that the method for the assessment and collection of the tax is not inconsistent with the natural justice.

Michigan Central Railroad Co. v. Powers, 201 U. S., 245, 293, and many cases there cited.

Where the State Constitution, as in North Carolina, requires that taxes shall be levied by uniform rule, the mode of assessing railroad companies must be uniform, that is, one company of the same class and character cannot be assessed in one method and another company of precisely the same kind and character in a materially different method.

But corporations of different character may be assessed in different methods. The uniformity rule only means that all of a class shall be treated alike.

State Railroad Tax Cases, 92 U. S., 575.

The wording of the uniformity clause in the North Carolina Constitution is very significant. It does not require that taxes shall be uniform or equal. It merely requires that they shall be levied "by uniform rule." This is nothing but a requirement that the same principle or rule of assessment or levy shall be applied to all members of a given class. It is not a requirement that the resulting taxes shall be uniform or equal even within the class, much less between different classes.

The Legislature of North Carolina possesses the power to classify occupations and other subjects of taxation by statutory enactment. Classification in tax statutes will not contravene the rule of uniformity when the tax is imposed alike upon all of a class.

Albertson v. Wallace, 81 N. C., 479.
State v. Cohen, 84 N. C., 771.
State v. Powell, 100 N. C., 525.
State v. French, 109 N. C., 722.
Cobb v. Commissioners, 122 N. C., 307.
State v. Green, 126 N. C., 1032.
State v. Carter, 129 N. C., 560.
State v. Hunt, 129 N. C., 686.
State v. Robertson, 136 N. C., 587.

The foregoing rule of the North Carolina courts was specifically approved by this court in the case of *Armour Packing Co. v. Lacy*, 200 U. S., 226.

The classification together of railroads, express companies, and telegraph companies as subject to the unit rule in assessment does not deny the equal protection of the laws.

Adams Express Co. v. Ohio, 165 U. S., 228.

The Legislature of a State may, in its discretion, provide different methods for assessing corporations of different classes, and a statute cannot be successfully assailed upon the ground that it prescribes a method of assessing railroad corporations different from that prescribed for assessing other corporations.

Kentucky Railroad Tax Cases, 92 U. S., 663;
Missouri v. Lewis, 101 U. S., 22;
Cummings v. Merchants, etc., Bank, 101 U. S., 160;
Cincinnati, etc., Co. v. Kentucky, 115 U. S., 321;
Missouri Pacific R. Co. v. Mackey, 127 U. S., 205;
Minneapolis, etc., R. Co. v. Beckwith, 129 U. S., 26;
Home Ins. Co. v. New York, 134 U. S., 594;
Bell Gap R. Co. v. Pennsylvania, 134 U. S., 232;
Pacific Express Co. v. Seibert, 142 U. S., 339;
Magoun v. Illinois Bank, 170 U. S., 283;

A valuable discussion of the application of the Federal constitutional principle of equal protection of the laws and of the State constitutional rules of uniformity, and of the wide powers of the Legislatures to make classifications, is to be found in the opinion of Mr. Justice McKenna in the *Magoun Case,* last cited. He says:

> "The appellant attacks both its (the law's) principles and its provisions—its principles as necessarily arbitrary and its provisions as causing discriminations and creating inequality in the burdens of taxation.

"Is the act open to this criticism? The clause of the Fourteenth Amendment especially invoked is that which prohibits a State denying to any citizen the equal protection of the laws. What satisfies this equality has not been and probably never can be precisely defined. Generally it has been said that 'it only requires the same means and methods to be applied impartially to all the constituents of a class so that the law shall operate equally and uniformly upon all persons in similar circumstances.' *Kentucky Railroad Tax Cases,* 115 U. S., 321, 337. It does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. *Hayes v. Missouri,* 120 U. S., 68. Similar citations could be multiplied. * * * With these for illustrations, it may be safely said that the rule prescribes no rigid equality and permits to the discretion and wisdom of the State, a wide latitude as far as interference by this court is concerned. Nor with the impolicy of the law has it concern.

"In other words, the State may distinguish, select, and classify objects of legislation, and necessarily this power must have a wide range of discretion."

The only limitation on this power of the State Legislature to classify, under both State uniformity rules and the Fourteenth Amendment, is that there must not be such clear and hostile discriminations against particular persons or classes of such unusual character and so unknown to the practice of governments, as that the classification cannot be said to be

based upon any reasonable ground, but must be held to be purely arbitrary.

Bell's Gap Railroad v. Pennsylvania, 134 U. S., 232, 237;

Gulf, etc., Railroad v. Ellis, 165 U. S., 150, 165;

Magoun v. Illinois Bank, 170 U. S., 283, 294;

Keeney v. New York, 222 U. S., 525.

But where there is a difference, it need not be great or conspicuous in order to warrant classification.

Keeney v. New York, supra, 536;

Republic Acceptance Corporation v. De Land, 275 Fed., at 637.

Classification of subjects of privilege or license tax by amount of property or business is competent and does not violate the Federal Constitution.

Magoun v. Illinois Bank, supra;

Clark v. Titusville, 184 U. S., 329.

Indeed, classification is essential to the principle of equality and uniformity in the burden of taxation. A uniform tax, without classification among subjects in different circumstances, would be grossly unequal and destructive of the principle of uniformity and equality in taxation and of a just adaption of property to its burdens.

Pacific Express Co. v. Seibert, 142 U. S., 339.

However, an arbitrary discrimination in taxation between domestic and foreign corporations is not a legitimate classification.

Southern Railway v. Greene, 216 U. S., 400.

But a discrimination between corporations and individuals with regard to taxation cannot be pronounced arbitrary, although the court may not know the precise ground of policy that led the State to insert the distinction in the law. The State may have a policy in taxation, and the courts may not review that policy.

Quong Wing v. Kirkendall, 223 U. S., 59, 63;
Ft. Smith Lumber Co. v. Arkansas, 251 U. S., 532.

There is no pretense in these suits that there has been any discrimination against foreign in favor of domestic corporations, or against interstate in favor of intrastate carriers. All are treated absolutely alike under the tax laws of North Carolina. And we see among the plaintiffs domestic corporations and foreign, interstate carriers and carriers operating only within the State, all making the very same contentions and attacking the tax laws of North Carolina in the same ways.

This immediately removes from these suits the most frequent ground for contention of violation of the Fourteenth Amendment, the ground upon which the decision in *Southern Railway v. Greene,* 216 U. S., 400, was based.

All members of the class of railroads are treated alike. All railroads are classed as one class and taxed in the same way.

It is perfectly competent for the State to class railroads together and tax them in a different way from other taxpayers. It is perfectly competent for their properties to be assessed by central boards, while the property of private landowners is assessed by local county boards. There can be no doubt that under the rules of classification it was perfectly competent for the statute of North Carolina to repose

the discretion of reviewing and passing upon the question of reduction of assessments in county boards as to real property in general and the Commissioner of Revenue as to railroads and all other public service corporations centrally assessed.

The fact that railroad property is assessed by one board or body; that other property in the State is assessed by other and independent bodies, and that there is no general equalization of the property of railroads with other property, does not render such assessment or the taxes levied thereon invalid.

> *Cummings v. National Bank,* 101 U. S., 153;
> *Michigan Central Railroad v. Powers,* 201 U. S., 245, 301.

In the *Michigan Central Case* the court quoted with approval and applied to the case of a railroad tax the following language of the court in the *Cummings Case*:

> "While it may be true that this system of submitting the different kinds of property subject to taxation to different boards of assessors and equalizers, with no common superior to secure uniformity of the whole, may give opportunity for maladministration of the law and violation of the principle of uniformity of taxation and equality of burden, that is not the necessary result of these laws, or of any one of them; and a law cannot be held unconstitutional because, while its just interpretation is consistent with the Constitution, it is unfaithfully administered by those who are charged with its execution."

We see, therefore, that no complaint can be made that as to real property in general it was the local boards which had

the discretion to decide whether reductions should be made, and as to railroad property it was the Commissioner of Revenue. It follows necessarily, from this very separation of functions and discretions that in all human probability there will be some inequality of result, even under the system prevailing in North Carolina where the Commissioner of Revenue is one of the three members of the State Board of Equalization whose duty it is to equalize the assessments of all property in the State.

The central board or officer cannot be intimately and personally acquainted with the values of real property in a county. The county boards cannot be intimately acquainted with the values of railroads as a whole or unit throughout the State. Elements of fact or evidence may influence the local boards which would not influence the central officer. It is inherent in the nature of things that where such a discretion is reposed in two different boards or persons there is apt to be some difference in its exercise.

But it is competent under the law for such discretion to be so reposed in different bodies or persons and any unintentional lack of uniformity which results is not illegal or unconstitutional but simply unavoidable. It is a result of the limitations of humanity which prevent the ideal of perfect equality or uniformity in taxation from being possible of achievement.

And so it is clear that in order to raise any constitutional question of discrimination it would be necessary for the plaintiffs not only to allege but to prove that there was some privity or agreement, some plan or scheme, between the Commissioner of Revenue and the various county boards, whereby the former should refuse to reduce railroad assess-

ments and the latter should reduce assessments of other property in order to discriminate against railroads and in favor of others.

Even if such allegation had been made, it is quite obvious from the evidence that no such scheme or plan or agreement existed. If it had, thirty-three counties out of the hundred in the State would not have refused to reduce locally assessed property. The very fact that only 67 county boards made a reduction and that 33 made none shows that there was no scheme, plan, or agreement among the county boards. There is not a scintilla of evidence that the Commissioner of Revenue acted in privity with any one of the county boards which did make reductions.

The plaintiffs make no such contention. They merely contend that the same elements in economic conditions which caused depression in 1921 in land values in general applied *equally* to railroad property values, and that therefore it was a mistake for the Commissioner of Revenue not to give them the benefit of the average reduction in the 67 counties where reductions were made.

An immediate answer to this is that the values of permanent system properties of railroads, devoted to a technical use, depend on very different elements from those upon which the values of land in general depend. When farmers and other landowners were suffering absolute losses in North Carolina in 1921, the Interstate Commerce Commission granted to railroads raises of 25 per cent as to freight rates and 20 per cent as to passenger rates. There was no governmental board which could in this way raise the price the farmer should get for his tobacco or cotton, or the profit the merchant or manufacturer should realize on his business.

From its very nature railroad property does not fluctuate violently in value following temporary depressions as does real property. The plaintiffs are entirely wrong as to their first proposition: That the conditions causing depression of real property in general also and equally depressed the value of railroad property.

Besides there was no general reduction of real property assessment throughout the State. The whole matter was controlled by purely local conditions. In some counties the great majority of the real property was farm land, cotton or tobacco land, and the ruinous prices obtained for those crops violently depressed land values in those counties. Such counties made reductions in assessments to correspond to local conditions.

In other counties a greater proportion of lands were devoted to industrial, commercial, and similar pursuits, and the farm land was not exclusively devoted to the one or two crops which failed but to a variety of purposes. In such counties the local conditions were not such as to depress land values perceptibly enough to justify a finding that they were below the assessed value. Thirty-three such counties refused to make reductions, because not justified by local conditions.

But railroad properties are wisely valued and assessed as units, a unit for the system, a unit for the taxing State. It would be unwise to attempt to value the lines of the Southern in North Carolina by allowing each county to value that part in its boundaries. It is not local conditions so much as State-wide and nation-wide conditions which affect the values of railroad properties.

It is an absolute non-sequitur for the plaintiffs to con-

tend that because real property assessments in general were reduced in 67 counties out of 100, therefore it was discrimination not to reduce railroad property assessments as a whole throughout the State.

Take counties like Guilford, Forsyth, or others of the larger, richer counties of the State which pay most taxes to the State and in which no reduction of assessments of any property was made in 1921. Then suppose that, following the contention of the plaintiffs, the Commissioner of Revenue by analogy to the reductions made in 67 counties had reduced all railroad property in the State by the average percentage of such reductions. The citizens of Guilford, Forsyth, or any of the other thirty-one counties in which no reduction had been made, would have had every cause to contend that such conduct on the part of the Commissioner of Revenue was a discrimination against them, since their land continued to be taxed at the 1920 assessment and the properties of railroads in their counties were reduced in assessment.

If the contentions of the plaintiffs were valid a citizen of Guilford County under the existing State of facts would have the same right to sue in the Federal courts to restrain the collection of all *ad valorem* taxes on the ground that the fact that real property in 67 counties was reduced from the 1920 assessment and he was taxed for 1921 on the same assessment as the year before was an unconstitutional discrimination against him.

The want of equity in these contentions is more strikingly shown when we consider that all real property, as such, owned by railroads in North Carolina, that is all real property *off the right of way* and not devoted to purposes of

transportation (and of such property the plaintiffs own a considerable amount in various counties) is assessed locally like all other property and, wherever it lay in one of the counties which made reductions in 1921, *was reduced in assessed value exactly as all other real property in that county.* So that as to all property in the same condition and situation as other real property the plaintiffs did get the very same benefit of reductions as all other persons in every one of the 67 counties making reductions in which they had such property.

It was only the railroad system property, centrally assessed and centrally passed upon for determination of the question of reduction, which was not reduced in assessment.

As to the reductions, the question is essentially only one of classification. The entire class of personal property, comprising a very considerable portion of taxable values, was left in 1921 without any reduction from 1920. As to this class the Legislature did not even authorize reduction. Except in one instance, there was no material reduction made in the class of railroad property. Even in the class of real property in general, there was no systematic or uniform reduction. There were only sporadic reductions in various counties, according to local conditions. This is perfectly competent classification, and all rules against discrimination are always subject to the power of the State to make reasonable classifications. Discriminations are such only when made between members of the same class.

That the contentions of the plaintiffs as to discrimination utterly fail to take into account differences between local conditions and State-wide conditions, and have no basis in law, is seen from the argument made by the Atlantic Coast

Line that it was discriminated against because the valuation of its right of way does not change at the corporate limit of the town of Rocky Mount, while as to real property in general assessments inside the limit are higher than those without. This is merely a roundabout attack on the Unit Rule of assessment of railroad property, which rule is so well settled as the correct method as to be beyond dispute. It is in effect merely a contention that the property of that railroad in the same State should be locally assessed in chunks, like farms or city lots.

Upon the hearing, however, when the plaintiffs had utterly failed to make out any case for equitable relief on their allegation that the Commissioner of Revenue had discriminated against them by refusing to reduce their assessments in 1921 the only allegation in their complaints as to discrimination, and when the only evidence they introduced had no reference whatever to any possible discrimination on the part of the Commissioner of Revenue, the plaintiffs endeavored to change their attack and to argue, without any allegation in their complaints to support it, that the discrimination against them consisted not in the act of the Commissioner of Revenue in refusing to reduce their assessments, but in a general practice of local boards throughout the State of underassessing other property.

The plaintiffs certainly had no confidence in this idea when they brought these suits or they would have made such allgation in their complaints. At the hearing they failed to introduce a scintilla of evidence to show that the Commissioner of Revenue had been guilty of discrimination within the meaning of any of the principles of law we have discussed. The only evidence they had was a tabulated list

purporting to be a list of sales of real estate during a period of months, compared with tax assessments, and purporting to show that sales of real estate in general had for that period been made at higher prices than the assessed values of the lands.

This evidence manifestly had no bearing on their allegation that the Commissioner of Revenue had discriminated against them by refusing to reduce their assessments, for there was no pretense that when he passed upon their applications the Commissioner had any knowledge of the alleged facts contained in these lists, or that anybody else had any knowledge of such facts.

And what is the basis for such a contention by the plaintiffs?

Nothing but these lists of sales compared with assessment values, evidence such as that of which this court said in the case of *Coulter v. Louisville & Nashville R. Co.*, 196 U. S. at 609:

> "It is not contended that a mere undervaluation would be enough. It is admitted that it must have been systematic and intentional. There is, no doubt, a natural inclination to think such an undervaluation probable when it is suggested. But what is the proof? * * * It is obvious that the accidental sales in a given year may be a misleading guide to average values, apart from the testimony that some at least of the conveyances did not report true prices, yet they furnish the chief weapon of attack. * * * Inequality, we repeat, is nothing, unless it was in pursuance of a scheme."

It is such "accidental sales in a given year" which constitute the sole evidence upon which the plaintiffs rely to support their contention of discrimination.

The lists of these sales themselves show that in many instances the true sale price is not given. They state that the price named on the recorded deed was taken if it appeared to be the real consideration. Otherwise the sale price was estimated from the amount of Federal Revenue Stamps.

The court will take judicial notice of the fact that revenue stamps are placed on deeds in 50-cent denominations upon every $500 of the sale price or fraction thereof. If the sale price was $4,001 the stamps would be $4.50 and the person compiling the list, reading the amount of stamps, would put down the sale price as $4,500. This would allow an error of $499 in a sale of $4,001. This one fact is sufficient to crush all probative value of these lists.

Again there are no corresponding lists of sale prices of railroads compared with assessed value of railroads. This is impossible because railroads have not been bought and sold on the market like farms. Yet such a table is the only thing to which the evidence offered would bear any analogy.

The whole result of this evidence, however, even if it had any probative force, would be to come down to the bare proposition that the mere fact that some property may be assessed relatively lower than the property of the plaintiffs constitutes discrimination in law. This is not the law.

There is no discrimination against railroads in fact. Their property is taxed in 1921 on an assessment scarcely twice that existing before the statewide revaluation, while the property of other classes of corporations, tobacco companies, power companies, manufacturing companies and the

like, are taxed upon assessments all the way from three times to seven times higher than pre-revaluation assessments. And real property in general is taxed upon assessments nearly four times higher than those of 1919.

If there were any inequality, however, there is not a scintilla of evidence that it is the result of intentional discrimination, or of any plan, scheme, agreement, fraud, or systematic purpose. There is not only no proof of this but it is not even alleged.

VIII.

The plaintiffs' contention that the general system of taxation created by the North Carolina statutes is a violation of the Constitution of the State is without merit.

Some of the plaintiffs make a particular contention under the State Constitution which has no reference to constitutionality under the Federal Constitution but is purely a question of State law upon which the Supreme Court of the State has not yet passed.

They contend that the effect of the State Constitution is to require the Legislature to impose an *ad valorem* tax on all property and to devote the avails of this tax to both State and local purposes.

They argue, therefore, that it was a violation of the State Constitution for the Legislature in 1919 and 1920 to "abolish the *ad valorem* tax for State purposes," as it is loosely described, that is to cease to devote a certain percentage of the *ad valorem* tax to the support of the State Government, to provide that all avails of the *ad valorem* tax should go to the support of the local subdivisions of the State and to raise

all revenues for the support of the State government by the various income, inheritance, franchise, license, privilege, and excise taxes imposed by the Revenue Act.

No doubt where a substantial federal question is presented, a question of constitutionality under the Federal Constitution which gives the District Court sitting with three judges jurisdiction under Section 266 of the Judicial Code, local questions as well as the questions arising under the Federal Constitution are properly before the court.

Louisville & Nashville R. Co. v. Garrett, 231 U. S. at 304;

Wofford Oil Co. v. Smith, 263 Fed. 396.

But the reference to "constitutionality" in Section 266 is to an asserted conflict with the Federal Constitution; the question of unconstitutionality in that sense must be substantial and is the basis of the jurisdiction of the court.

Ibid.

But although it has jurisdiction to consider the questions of State law and of constitutionality under State constitutions, a substantial federal constitutional question being presented, still if the federal constitutional grounds upon which the plaintiff comes into the court fail, the federal court will be very cautious about retaining jurisdiction to pass upon questions of State law and interfering with the State's administration of its taxes upon other considerations which would not have given it jurisdiction.

Coulter v. Louisville & Nashville R. Co., 196 U. S. 599, 609.

In that case this court said:

> "But the supposed infringement of the Fourteenth Amendment is the only ground on which the railroad company could come into the Circuit Court, and if that ground fails, and obviously fails, the court should be very cautious, at least, in interfering with the State's administration of its taxes upon other considerations which would not have given it jurisdiction."

If this Court should reverse the District Courts and hold that the taxing system of North Carolina violates the Federal Constitution, it would serve no purpose for it to go farther and pass upon the question of constitutionality under the State Constitution which has not been passed upon by the State Courts. If this Court should affirm the District Courts in their refusal to grant injunctions on the ground of violation of the Federal Constitution, then under the rule, it should be very cautious about going farther and passing upon this pure question of State law.

The construction by the State courts of last resort of the State Constitution and statutes will be accepted as controlling by the Federal Courts.

Adams Express Co. v. Ohio, 165 U. S. at 219.

To what purpose then should this court be asked to pass upon the question whether the State Constitution requires avails of property taxation to be distributed by the Legislature both to State and local purposes, when if this Court decided that question the Supreme Court of North Carolina might the next day announce a contrary decision which would be controlling?

But there is no merit in the contention of violation of the State Constitution.

The constitutional provision is this:

Article V, Sec. 3:

> "Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and, also all real and personal property, according to its true value in money: (Proviso) * * * The general assembly may also tax trades, professions, franchises, and incomes: Provided, that no income shall be taxed when the property from which the income is derived is taxed."

This provision is merely a direction that the Legislature shall impose an *ad valorem* tax on all property. It cannot possibly be construed into a direction that the avails of such tax must be apportioned both to the support of the State and of the local governments. It nowhere says that avails of the *ad valorem* tax must be applied to the support of State Government. It merely directs that the tax shall be imposed.

There is no denial that the tax is imposed. It is merely complained that its avails all go to local purposes.

The constitutional provision itself specifically authorizes the Legislature to tax trades, professions, franchises, and incomes, to impose the very taxes which are imposed by the Revenue Act and the avails of which go to support the State Government.

To ask a court to hold that that constitutional provision forbids the Legislature to devote the avails of the *ad valorem* tax to local purposes and the avails of the trades, professions,

franchise, and income taxes to State purposes, is simply to ask the court to read into the Constitution of North Carolina words which the people have not put into it.

A somewhat similar contention, made as an allegation only, we believe, in the complaint of the Norfolk Southern is that it is a violation of this provision of the Constitution of North Carolina to levy any *ad valorem* tax at all against railroad property, since under the laws of the State shares of stock in the hands of shareholders of corporations are not taxed.

The contention is that the constitution requires all property to be taxed; that it is a violation of the constitution to tax any property unless all is taxed; that although the capital stock of corporations is taxed under North Carolina laws, the tax being collected at the source and paid by the corporation itself, still the shares of stock in the hands of shareholders are separate property from the capital stock and are therefore required by the Constitution to be taxed also; that the fact that only the capital stock is taxed, not the shares in the hands of shareholders, is a violation of the Constitution which renders any *ad valorem* property tax against the plaintiff railroad invalid.

Of course this same contention might be made by every landowner in North Carolina with equal force.

There is, however, no merit in the contention. "Investments in stocks" are taxed in North Carolina, in compliance with the direction of Article V, Section 3, by the taxing of the capital stock.

Prior to 1887 domestic corporations in North Carolina were required to list and pay taxes on all their real, personal, and tangible property upon valuations fixed by local assessors

at the situs of the corporation. The corporation itself was not required to list and pay taxes on its capital stock. The shareholder was required to list his shares of stock at his place of residence and to pay the taxes thereon as there assessed.

Under this method all the stock owned by non-residents escaped taxation, as well as a large part of that owned by residents of the State, while all that was listed was undervalued.

In 1887 the law was changed and the present method of taxation of investments in stock was adopted. Under the new method, whereby the corporation itself is required to list and pay taxes directly and at source on its capital stock, corporate stock cannot escape taxation.

This law has been on the statute books nearly a third of a century without change. It is set out in the Machinery Act of 1921, sections 42 and 43 (Appendix E to this brief).

The officers of corporations are required to file with the Tax Commission (now Commissioner of Revenue) a report showing total capital stock, number of shares issued, par value of each share, dividends declared and highest price of stock. The tax officers thereupon fix the tax value of each share and the corporation is required to pay the tax assessed against the share for the owner. This clearly meets the requirement of the Constitution and constitutes a taxing of "investments in stocks" of the corporation.

There is nothing in the Constitution requiring the Legislature to tax both capital stock and shares of that capital stock as distinct investments. When the capital stock is taxed, the investment in stock is taxed, and it is immaterial whether the tax is paid by the corporation for the share-

holder or by the shareholder for himself. The result financially is the same whether the capital stock is taxed as such or as shares in the hands of stockholders. And the method used in North Carolina is the most efficient and productive method for the collection of the tax.

Some courts draw a distinction between capital stock and the shares in the hands of the shareholders. If there is any distinction, however, it is that capital stock is a liability of the corporation and shares are assets in the hands of the shareholders. To contend that both should be taxed would be to contend that the corporation should be taxed on a liability. A liability cannot be taxed as an "investment." It is only property or investment which is required to be taxed and this requirement is met by taxing the capital stock as the investment or property of the shareholder, and the fact that the machinery of collection is payment direct by the corporation for the shareholder does not make it a tax on the liability of the corporation.

The Legislature is the judge of what constitutes double taxation and has the exclusive power to fix the taxing policy of the State. The policy of the Legislature of North Carolina is that to tax the capital stock and to levy an additional tax on shares in stockholders' hands would be double taxation. Whether the Legislature might have the power to impose such double taxation is immaterial. It has chosen not to do so and follows the example of all other States and taxes the capital stock and requires the corporation to pay it for the stockholders.

Certainly no other taxpayer can complain of his *ad valorem* tax on the ground that the Legislature has not imposed a double tax on corporate stock.

IX.

The Norfolk Southern is fixed with acquiescence in the assessment of its property and cannot be heard to complain of it in equity.

The property of the Norfolk Southern in North Carolina had been revalued by the State Tax Commission at $27,023,-462 and that value was approved and adopted by the Legislature as the tax assessment of that railroad.

In 1921, after the Machinery Act of that year in section 28 (*g*) as amended had provided that petitions might be filed with the Commissioner of Revenue to review the revaluation assessment and had given him the power to pass on such petitions and to reduce such assessment if facts shown him justified a reduction, the Norfolk Southern made an application under that statute to the Commissioner of Revenue to review its said revaluation assessment and to reduce it.

It filed with him a written petition setting forth facts and arguments which it contended showed that its assessment should be reduced. Its allegation was that the assessment of $27,034,168, being North Carolina's mileage proportion of the total properties of the Norfolk Southern valued at $30,-806,675, was excessive "when tested by any method known for the valuation of property." This petition will be found on pages 82 *et sequitur* of Norfolk Southern Record.

The petition does not purport to inform the Commissioner of Revenue what the Norfolk Southern believes the true value of its property in North Carolina to be. It attempts to prove that $27,034,168 is an excessive value by testing it by various

methods stated by the petitioner to be "methods of ascertaining the value of railroad properties."

The petition endeavors to show the excessiveness of the assessment, first, by comparing it with figures purporting to be the market values of the stocks and bonds of the Norfolk Southern; second, by comparing it with a sum contended to represent the capitalization of that company's net earnings, and third, by comparing it with the cost of reproduction less depreciation of its property in North Carolina as shown by the final valuations of the Interstate Commerce Commission.

With reference to the third comparison, the cost of reproduction less depreciation value, the Norfolk Southern in the said petition said:

> "7th. Another method of ascertaining the value of railroad property is the cost of reproduction of such property, less depreciation. Under the provisions of the Interstate Commerce Act relative to the valuation of railroad property by the Interstate Commerce Commission, agents of the Bureau of Valuation examined the property of Norfolk Southern Railroad Company, including its said leased lines; made a report of the cost of reproducing said lines of railroad, both new and with depreciation as authorized by the rules of the Commission, which included all of its non-carrier lands and buildings. A copy of the report was duly served upon the State of North Carolina. The State of North Carolina made no exception, apparently accepted the findings of the Bureau of Valuation as the cost of reproducing said property, and the cost of reproducing the same less depreciation. The Bureau of Valuation report showed the cost of reproducing the property of Norfolk Southern Railroad Company, including its leased lines, without depreciation, as $27,-

680,811.00, and after deducting depreciation, $23,412,336.00. Since the date of said valuation petitioner has made additions and betterments to its road bed and rolling stock according to the rules of the Interstate Commerce Commission to the value of $2,516,336.00. After being depreciated according to the rules of the Commission, the cost of reproduction less depreciation is $26,028,366.00.

"8th. It is quite evident from a consideration of these facts and figures, that the Tax Commission in making its valuation of 1920, failed and neglected to take into consideration the depreciation upon property which had been reported by the Interstate Commerce Commission, *and which by the laws of North Carolina are required to be taken into consideration in fixing the value thereof.*"

The petition then summarizes in the form of tables the facts alleged as to stocks and bonds value, capitalization of net earnings value, and cost of replacement less depreciation value of its property, the table as to cost of replacement less depreciation value being as follows:

"Taking either of said sums and allotting to the State of North Carolina a mileage proportion, the taxable value of the property in North Carolina would be:

"(*a*) * * *

"(*b*) Upon the valuation which the Act of Congress allows the company to earn 6 per cent cost of reproduction less depreciation:

North Carolina.....	87.754%	$22,840,932.30
Virginia	12.246%	3,187,433.70
Total.....		$26,028,366.00

And the petition closes with this prayer:

> "Your petitioner, therefore, respectfully shows in conclusion, that its property in North Carolina has been excessively valued for taxation and the Commissioner is respectfully requested to reduce this valuation to such figures as may be just and proper *and as shown by the foregoing facts.*"

It will be recalled that the method referred to by the Revaluation Act and directed to be used in the valuation of railroad properties was this very method of ascertaining cost of replacement less depreciation. That act, under which the valuation here complained of was made, provided the commission should have the right to require report by the company of—

> "cost of reproduction of the properties of such company new, including side tracks, double tracks, and all properties owned by such companies in this State, less reasonable depreciation for such of its properties as have depreciated in value, and shall also include the present value of all real estate used as rights of way, including depot sites, yards, terminals and otherwise.

As the result of the showing made by the Norfolk Southern in its petition, it being the only case in which the Commissioner of Revenue was furnished the *final figures* of the Interstate Commerce Commission as to cost of reproduction, all the other roads having submitted merely the incomplete tentative estimates, the Commissioner decided that $27,023,462 was an excessive assessment for the property of Norfolk Southern in North Carolina in 1921, and accordingly he reduced it to *the very figures submitted by that com-*

pany as being the cost of reproduction less depreciation of its property in North Carolina, the very value directed by the statute to be considered, to-wit, $22,840,932.30.

Nowhere in the petition did the Norfolk Southern contend or pretend that that sum was not the true value of its properties in North Carolina. On the contrary, it specifically asserted as matter of fact that it was the cost of reproduction less depreciation value, and that because that was true its revaluation assessment should be reduced.

The Norfolk Southern took no exception to the action of the Commissioner in reducing its assessment to this exact value pointed out in its petition and there contended to be the cost of reproduction less depreciation value of its property in North Carolina. It did not ask the Commissioner to reconsider and reduce to a lower figure. It made no protest. It acquiesced in his action in reducing the revaluation assessment to that sum. (Norfolk Southern Record, pp. 37-38.)

No protest, exception, or objection of any kind was made by the Norfolk Southern to this reduced assessment until it filed its bill of complaint on October 17, 1921, nearly a month after the Southern and A. & Y. had brought their suit on September 22, 1921, and the A. C. L. had brought its suit on September 26, 1921. It seems plain, therefore, that it never occurred to the Norfolk Southern to feel aggrieved or to complain of its reduced assessment until it saw other railroads bring their suits attacking the entire tax system of North Carolina, and decided that it desired to join in the attack in the hope that it might get a still further reduction than that already given it with its consent.

This is not a mere case of laches, therefore, or of acquies-

cence presumed from lapse of time, but of specific and express consent of this plaintiff to the assessment which it now complains of in this suit. Certainly it has no standing in a court of equity to ask that *ad valorem* taxes be enjoined on the ground of invalidity of an assessment made with its consent and upon its own showing of fact.

Its own figures having been accepted by the Commissioner, the corporation cannot complain that it was taxed disproportionately as compared with other railroads or other taxpayers, the Commissioner not having acted fraudulently.

St. Louis-San Francisco Ry. Co. v. Middlekamp, 256 U. S., 226, citing

Sunday Lake Iron Co. v. Wakefield, 247 U. S., 350, 353.

One other matter is worthy of note in connection with this reduction of the Norfolk Southern's assessment to the final cost of replacement less depreciation figure of the Interstate Commerce Commission. Some of the other roads contended in the district courts that it was a discrimination against them for the assessment of the Norfolk Southern to be controlled by, and reduced to, this Interstate Commerce Commission valuation, when their assessments were not controlled by the Interstate Commerce Commission valuations of their properties.

The Norfolk Southern was the only one of the plaintiffs as to whose properties the I. C. C. had completed its survey and announced a final cost of replacement less depreciation value. It is a comparatively small road and the engineers of the I. C. C. had been able to complete its physical valuation and to announce *final figures* on June 11, 1921 (Nor-

folk Southern Record, p. 8). The State Tax Commission, in revaluing this road in 1919-1920, and the legislature, when it approved and adopted the revaluation, were without the benefit of these final figures of the I. C. C.

But these figures were available in 1921 in time for the Norfolk Southern to submit them to the Commissioner of Revenue in its petition to him to reduce the revaluation assessment. It was entirely proper for him to consider these figures, of which neither the State Tax Commission nor the Legislature had had the benefit and in his discretion to reduce the revaluation assessment accordingly.

But no final figures have even yet been announced by the I. C. C. as to the properties of either of the other plaintiffs. The only thing they could show from the I. C. C. was the "tentative figures," not based on a complete physical examination and valuation, but on engineers' estimates. There is no analogy between these tentative figures and the final figures announced in the case of the Norfolk Southern to support any contention of discrimination by the other roads.

X.

Summary of contentions of defendants as to the ad valorem assessments and taxes.

We contend, therefore, that neither of the plaintiffs has shown that its assessment is illegal as being in violation of statutory method or in conflict with either the State Constitution or the commerce clause or the Fourteenth Amendment of the Federal Constitution, or has shown that its assessment is discriminatory in violation of either the uniformity rule of the State Constitution or the Fourteenth Amend-

ment; that neither plaintiff has made out a case of illegality or unconstitutionality of its assessment or has shown any equity to support its prayer for injunction to restrain collection of *ad valorem* taxes. We contend, therefore, that the district courts rightly refused to grant the interlocutory injunctions as to *ad valorem* taxes and that their decree should be affirmed.

PART II.

THE FRANCHISE OR PRIVILEGE TAX.

I.

The contentions of the parties and the question raised in these suits as to the franchise or privilege tax.

The discussion of the franchise or privilege tax will not be complicated with matters of fact. As to this tax there are no disputed facts and it is a pure question of law as to whether the tax is valid.

In addition to the *ad valorem* property tax which is imposed on railroads as well as on all property in the State and the avails of which go to support political subdivisions of the State, North Carolina imposes, as one of the numerous license, excise, franchise, privilege, and occupations taxes provided for by the Revenue Act and the avails of which go to support the State government, a "franchise or privilege tax" on railroads payable directly to the State Treasurer.

The statute takes "the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year * * * for *ad valorem* taxes," as the basis upon which the calculation of the franchise or privi-

lege tax shall be made and as being the measure of "the extent to which every such railroad company is exercising its franchise in this State." The tax amounts to one-tenth of one per cent of that value, that is one-tenth of one per cent of the assessed value of the railroad's property in the State.

The plaintiffs contend, first, that this tax is illegally calculated in that it is based upon an excessive, illegal and unconstitutional assessment for *ad valorem* taxes. This is of course not a contention of invalidity of the franchise or privilege tax *per se,* but is merely the contention already discussed in Part I as to invalidity of the *ad valorem* assessment. If the plaintiffs have not shown invalidity of the assessments, then that contention has no pertinency here. If they have shown such invalidity, it does not follow that the franchise or privilege tax of one-tenth of one per cent of the assessments is invalid. This tax will be measured by one-tenth of one per cent of whatever is found to be the legal *ad valorem* assessment.

The plaintiffs contend that the franchise or privilege tax as to each of them is unconstitutional and invalid for three reasons, to-wit:

First, that it is a property tax, not a franchise or privilege tax, and hence is in violation of a supposed prohibition against double taxation in the uniformity clause of the State Constitution and in the Fourteenth Amendment.

Second, that if it is a privilege or franchise tax it is for the privilege of engaging in interstate commerce and therefore a burden on such commerce in conflict with the commerce clause of the Federal Constitution.

Third, that the respective franchise taxes levied have been illegally calculated in violation of the terms of the statute.

The defendants contend that this tax is not a property tax but a privilege tax; that it is not imposed upon the privilege of engaging in interstate commerce and is no burden on that commerce, but that it is imposed on the privilege of engaging in strictly intrastate commerce carried on wholly within North Carolina, is correctly and legally calculated in each case and is valid. They contend that even if it were a property tax, as alleged, it would not follow that it is invalid.

II.

History of franchise or privilege taxation of railroads in North Carolina.

Prior to 1920, in the Revenue Acts, the State took for its own purposes a percentage of the general *ad valorem* property tax, leaving the balance to the subdivisions. Railroads like other persons contributed to State support through the *ad valorem* tax. (Appendix A, Sec. 3.)

In addition, for over twenty years and until 1920, Schedule C of the Revenue Acts had levied a variety of privilege, license, and occupation taxes which went to State purposes. The tax on railroads under this Schedule was a privilege tax graduated on the gross earnings per mile within the State, in the form in which it appears in Sections 77 and 78 of the Revenue Act of 1919. In the introductory section of the Schedule, Section 76, it was called "a tax for the privilege of carrying on the business or doing the act

named." In Section 78 it was called "The annual license tax for operating railroads within the State." (Appendix A.)

Special privilege taxes were levied upon other special classes of corporations, and then in Section 82 two classes of "franchise or privilege" taxes were levied upon general corporations, the first class for domestic corporations, the second for foreign corporations in general. Section 82 (9) excluded from the operation of these general franchise or privilege taxes railroads and the other corporations upon which special privilege taxes were imposed by other sections of the Schedule.

In the first chapter of Public Laws of 1920 the *ad valorem* tax on property, including railroads, for State purposes was abolished, except as to a percentage for the school fund. (Appendix C, Sec. 2.)

To provide additional revenue for the State, in lieu of the portion of the *ad valorem* tax thus relinquished, the rate of privilege tax on domestic and foreign corporations in general was raised from 1/25 to 1/10 of one per cent of their capital stock, various changes were made as to other special classes of corporate privilege taxes, and Sections 77 and 78 in which had appeared for many years the provisions for privilege tax on railroads on gross earnings per mile in the State were repealed; section 82 (9) of Revenue Act of 1919 was amended by striking out "railroad" so that railroads should no longer be excluded from the operation of all the sub-sections of Section 82; and a new privilege or franchise tax on railroads was enacted and inserted in Section 82 as sub-section (6½).

This new sub-section substituted for the old privilege tax on gross earnings per mile the new form of franchise or

privilege tax measured by 1/10 of one per cent of the total *ad valorem* assessment of the property of the railroad within the State, in the form in which it now appears in the Act of 1921. (Appendix C.)

In the Revenue Act of 1921, Section 3, the *ad valorem* tax for State purposes was entirely abolished, and it was provided that no tax on any property in the State should be levied for any of the uses of the State government and that taxes levied thereinafter were to raise the revenues for all State purposes. Schedule C of that act brought forward the changes that had been effected by the Act of 1920. The privilege tax on chair and sleeping cars was put in the place of the old Section 77 and Section 78 was marked obsolete. The franchise or privilege tax on railroads stood as Section 82 (6½). (Appendix D.)

III.

Power of the State to impose franchise or privilege taxes on interstate railroads.

1. *General Power of the State to Impose Franchise, Privilege, License, or Excise Taxes.*

There is a well recognized class of taxes within the power of the States to impose on railroads and other corporations, similar in their nature to the occupation and license taxes imposed on individuals for the exercise of certain privileges, and entirely distinct from property taxation. These taxes, both in statutes and in decisions, are indiscriminately denominated franchise taxes, privilege taxes, license taxes, and excise taxes for the privilege of doing certain business.

In Part I of this brief we have already called attention to the distinction between the frequent and untechnical use of the word "franchise" as meaning nothing more than the intangible property value springing from the use of the related tangible properties as an organic whole, and the true technical use of that term as designating a privilege. This distinction was pointed out in the case of *Adams Express Co. v. Ohio,* 165 U. S. at 244, and other cases cited in Part I of this brief.

And, although the taxation of franchises in the sense of property is limited by the rules governing property taxation, the imposition of a tax on a franchise in the true sense of privilege is a power somewhat arbitrary in its nature and allowing the very widest discretion to the Legislature, which may fix it at a percentage of a valuation or may impose it arbitrarily without any valuation.

California v. Pacific Railroad Co., 127 U. S. 1, 41, wherein the Court said, after citing *Railroad Co. v. Peniston,* 18 Wall., 5:

> "As explained in the opinion of the court in the latter case, the tax there was upon the property of the company, and not upon its franchises and operations. * * * The taxation of a corporate franchise merely as such, unless pursuant to a stipulation in the original charter of the company, is the exercise of an authority somewhat arbitrary in its character. It has no limitation but the discretion of the taxing power. The value of the franchise is not measured like that of property, but may be ten thousand or ten hundred thousand dollars, as the Legislature may choose. Or, without any valuation of the franchise at all, the tax may be arbitrarily laid."

There is the further well recognized distinction between a license tax authorized only in support of a police supervision, and a license tax for revenue. In the former case it is limited by the expense of the police regulation. In the latter case it is a true privilege tax for revenue and is arbitrary in its nature.

Atlantic, etc., Telegraph Co. v. Philadelphia, 190 U. S. at 164.

The franchise or privilege tax involved in these suits is a tax for revenue, not a license in support of a police regulation. Its purpose is to provide one of the sources of the revenue for the support of the State government.

Since a tax upon a privilege is an entirely different thing from a tax upon property, it is settled that a privilege, franchise (in the true sense), license, or excise tax may be imposed for or upon the privilege entirely in addition to all property taxation, and that such imposition will not constitute double taxation and will not violate the Federal Constitution.

Brooklyn City R. Co. v. New York, 199 U. S., 8, 50.
Ohio Tax Cases, 232, U. S., 576.
St. Louis, etc., R. Co. v. Arkansas, 235 U. S., 350.
Republic Acceptance Corp. v. De Land, 275 Fed., at 639, and other cases cited therein.

In the *Ohio Tax Cases, supra,* cases involving railroad taxation, the court said on this point:

> "Fifthly, it is contended that the act is in effect a double tax upon property, and hence lacking in the uniformity required by the State Constitution. But,

as was pointed out by the District Court, the exaction of 4 per cent of the gross intrastate earnings is not a property tax, but was an excise tax, whose amount is fixed and measured by such earnings; and double taxation, in a legal sense, does not exist unless the double tax is levied upon the *same property* within the *same* jurisdiction. Plaintiffs in error pay one tax with respect to property, another with respect to the privilege or occupation; hence the taxation is not double. * * *

"The so-called double tax is also laid hold of as a ground for the contention that there is a denial of equal protection within the meaning of the Fourteenth Amendment. This, however, is but another form of the objections to the classification, which has already been disposed of."

We see, therefore, that the power of the State in the imposition of franchise, license, privilege, and excise taxes for revenue purposes is not restricted by the rules governing *ad valorem* property taxes; that this power is somewhat arbitrary in its nature; and that such taxes may be imposed by the State entirely in addition to all property taxation.

2. *Franchise or privilege taxes on interstate railroads which are valid.*

These principles being well settled, it remains to be seen what effect, if any, does the fact that a railroad is engaged in interstate commerce have upon the right and power of a State to impose upon it such a franchise, privilege, license, or excise tax.

It is settled that corporations, including railroads and other carriers, engaged in interstate commerce, although their

interstate business is free from direct interference or burden by a State through which they pass, are nevertheless subject to the imposition of franchise, privilege, license, or excise taxes upon the privilege or business of engaging in intrastate commerce carried on wholly within that State.

U. S. v. Singer, 15 Wall., 111.
Maine v. Grand Trunk Railway Co., 142 U. S., 217.
Osborne v. Florida, 164 U. S., 650.
Pullman Company v. Adams, 189 U. S., 420.
Horne Silver Mining Co. v. New York, 143 U. S., 305.
Pennsylvania R. Co. v. Knight, 192 U. S., 21.
Home Insurance Co. v. New York, 134 U. S., 594.
New York v. Roberts, 171 U. S., 658.
Flint v. Stone Tracy Co., 220 U. S., 107.
Pullman Co. v. Kansas, 216 U. S., 56, 66, 67.
Baltic Mining Co. v. Massachusetts, 231 U. S., 68.
International Paper Co. v. Massachusetts, 246 U. S., at 141.
St. Louis, etc., R. Co. v. Arkansas, 235 U. S., 350.
Allen v. Pullman Company, 191 U. S., 171.
S. S. White Co. v. Coommonwealth, 212 Mass. 35.
Marconi Co. v. Commonwealth, 218 Mass., 558, 566-567.

In the case of *Osborne v. Florida, supra,* a license tax of Florida on the intrastate business within that State of interstate express companies was held valid, and the case of *Crutcher v. Kentucky,* 141 U. S., 47, a case involving a prohibition against doing any business, whether interstate or intrastate, in Kentucky, except after the payment of a tax,

was clearly distinguished. The Supreme Court of Florida had construed the tax in question as applying only to the intrastate business, and this court followed that decision. The court said:

> "In other words, this statute, as construed by the Supreme Court of Florida, does not exempt the express company from taxation upon its business which is solely within the State, even though at the same time the same company may do a business which is interstate in its character, and that as to the latter kind of business, the statute does not apply to or affect it. As thus construed, we have no doubt as to the correctness of the decision that the act does not in any manner violate the Federal Constitution.
>
> "The case of *Crutcher v. Kentucky,* 141 U. S., 47, is not in the slightest degree opposed to this view. The act which was held to be in violation of the Federal Constitution in that case prohibited the agent of a foreign express company from carrying on business at all in that State without first obtaining a license from the State. The company was thus prevented from doing any business, even of an interstate character, without obtaining the license in question. The act was held to be a regulation of interstate commerce in its application to corporations or associations engaged in that business, and that subject was held to belong exclusively to national and not State legislation.
>
> "It has never been held, however, that when the business of the company which is wholly within the State is but a mere incident to its interstate business, such fact would furnish any obstacle to the valid taxation by the State of the business of the company which is entirely local. So long as the regulation as to the license or taxation does not refer

> to and is not imposed upon the business of the company which is interstate, there is no interference with that commerce by the State statute. It was stated by Mr. Justice Bradley, in the course of his opinion in the *Crutcher Case,* the 'taxes or license fees in good faith imposed exclusively on express business carried on wholly within the State would be open to no such objection,' viz., an objection that the tax or license was a regulation of, or that it improperly affected, interstate commerce. We have no doubt that this is a correct statement of the law in that regard. The statute herein differs from the cases where statutes upon this subject have been held void, because in those cases the statutes prohibited the doing of any business in the State whatever, unless upon the payment of the fee or tax."

The decision in the foregoing leading case of *Osborne v. Florida* was followed and applied to a privilege tax on the intrastate traffic of an interstate Pullman Company. It was argued against the validity of that tax that a clause in the State Constitution made the Pullman Company a common carrier, and that that provision forbade the company to choose whether while engaging in interstate commerce through the State, it would also engage in intrastate commerce within the State. It was argued that if it were forced to take passengers in intrastate commerce by the Constitution of the State, the State could not tax the privilege of engaging in that business.

Pullman Co. v. Adams, 189 U. S., 420, wherein it was said:

> "If the Constitution of Mississippi should be read as imposing an obligation to take local passengers, the question for us might be which, if not both, the clause of the Constitution or the tax act, is invalid."

It held, however, that the Constitution had no such meaning and that the privilege tax on intrastate business was valid.

The Supreme Court reaffirmed this as being the effect of the holding in *Pullman Company v. Adams,* in the later case of *Western Union v. Kansas,* 216 U. S., 1, 41, wherein it was said:

> "So, what was actually decided in the Adams case was that the company was under no obligation to take local passengers, but if it chose to do that kind of business the privilege for doing it could be taxed by the State."

The decisions in *Osborne v. Florida,* and in *Pullman Company v. Adams,* were again followed in *Allen v. Pullman Company,* 191 U. S., 171. In that case it was held that, although a State may not burden interstate commerce, it may impose a privilege tax on corporations engaged in interstate commerce for carrying on that part of their business wholly within the State which does not affect their interstate business or the right to carry it on. It was further held that such tax will not be regarded as a disguised attempt to tax the privilege of engaging in interstate commerce if, under the laws of the taxing State, it is not compulsory for the carrier to do its intrastate business therein, and it may make an election; and it was held that in Tennessee the Pulman Company had such election and the tax on the privilege was valid and not a burden on interstate commerce.

The same rule announced in *Osborne v. Florida* as to express companies and in *Pullman Company v. Adams* and *Allen v. Pullman Company* as to Pullman companies was followed and applied to interstate railroads in the case of

Pennsylvania Railroad Co. v. Knight, 192 U. S., 21, wherein it was held that, although the Pennsylvania company was engaged largely in interstate commerce, it was still amenable to State regulations and State taxation as to any of its service which was performed wholly within the State and not as a part of interstate transportation.

The same principle was applied in the case of *Horne Silver Mining Company v. New York,* 143 U. S., 305, to the case of a privilege tax on a foreign mining corporation for the privilege of doing intrastate business within the State of New York.

The same principle was held in the case of *S. S. White Co. v. Commonwealth,* 212 Mass., 35, which decision was sustained in the appeal of that case to the Supreme Court under the title of *Baltic Mining Co. v. Massachusetts,* 231 U. S., 68.

The *Ohio Tax Cases,* 232 U. S., 576, are recent and conclusive authority as to the right of a State to impose such a tax as North Carolina has imposed in its franchise tax, that is, a tax on the privilege of carrying on an intrastate business of railroading within the State. The tax there involved was a tax upon interstate railroads for the privilege of carrying on business in Ohio. It was measured by 4 per cent of the total gross earnings for the year of such railroads from intrastate business within Ohio, excluding earnings from interstate business. This tax was in addition to *ad valorem* property taxation. It was attacked as double taxation, as denying equal protection of the laws, and as being a burden on interstate commerce. We have already quoted what the Court said as to the double-taxation contention. On the question of burden on interstate commerce it said:

"The tax is, however, in substance as in form, an excise or privilege tax. Its reasonableness, unless some Federal right be violated, is within the discretion of the State Legislature. We have seen that the classification adopted cannot be deemed illusory; that is, there is no apparent violation of the equality provisions of the State Constitution or of the 'equal-protection' clause of the Fourteenth Amendment, although railroad and pipe-line companies are required to pay at the rate of 4 per cent of the annual intrastate earnings, while other public-service corporations pay a less percentage. It is, of course, entirely settled that a State cannot, consistently with the Federal control of interstate commerce, lay such taxes, either upon property rights or upon franchises or privileges, as in effect to burden such commerce. But the line is not always easily drawn, as recent cases sufficiently show. * * * (Citing several.)

"The present act does not on its face manifest a purpose to interfere with interstate commerce, and we are unable to accept the historical facts alluded to as sufficient evidence of a sinister purpose, such as would justify this court in striking down the law. *We could not do this without in effect denouncing the Legislature of the State as guilty of a conscious attempt to evade the obligations of the Federal Constitution.*"

It is clear, therefore, that it is entirely within the competence of a State to impose upon an interstate carrier a franchise or privilege tax for the privilege of carrying on that part of its business which is purely intrastate carried on within the taxing State, provided a measure for the tax be chosen which will not itself have the effect of making the tax a burden on interstate commerce.

It has been judicially determined by this court that the exact wording of the North Carolina statute imposing the franchise or privilege tax here in question, to-wit, "for the privilege of exercising its franchise in this State" has the effect to impose such a tax, that is a tax for the privilege of carrying on purely intrastate commerce within the State, not a tax for the privilege of engaging in interstate commerce in the taxing State and that such a tax is valid and not in conflict with the Constitution of the United States.

Maine v. Grand Trunk Railway Co., 142 U. S., 217.
St. Louis, etc., R. Co. v. Arkansas, 235 U. S., 350.

In the *Maine Case* the Court, Mr. Justice Field writing the opinion, said:

> "The tax, for the collection of which this action is brought, is an excise tax upon the defendant corporation for the privilege of exercising its franchises within the State of Maine. It is so declared in the statute which imposes it; and that a tax of this character is within the power of the State to levy there can be no question. The designation does not always indicate merely an inland imposition or duty on the consumption of commodities, but often denotes an impost for a license to pursue certain callings, or to deal in special commodities, or to exercise particular franchises. It is used more frequently in this country in the latter sense than in any other. The privilege of exercising the franchises of a corporation within a State is generally one of value, and often of great value, and the subject of earnest contention. It is naturally, therefore, that the corporation should be made to bear some proportion of the burdens of the government. As the granting of the privilege rests

> entirely in the discretion of the State, whether the corporation be of domestic or foreign origin, it may be conferred upon such conditions, pecuniary or otherwise, as the State in its judgment may deem most conducive to its interests or policy. It may require the payment into its treasury, each year, of a specific sum, or may apportion the amount exacted according to the value of the business permitted, as disclosed by its gains or receipts for the present or past years. The character of the tax, or its validity, is not determined by the mode adopted in fixing the amount for any specific period or times of its payment. The whole field of inquiry into the extent of revenue from sources at the command of the corporation is open to the consideration of the State in determining what may be justly exacted for the privilege."

It is to be noted also that the dissent in that case was not based at all on the theory that the State did not have the power to levy an excise or privilege tax on the interstate railroad for the privilege of exercising its franchises in the State, or for doing intrastate business within the State, but was based purely on the contention by the minority that gross receipts, including thus receipts from both interstate and intrastate commerce, was an improper measure of such a tax, and constituted it a burden on interstate commerce.

The tax in that case was measured by gross receipts *within the State,* and the majority of the court held that this was valid, and distinguished the case of *Philadelphia, etc., Steamship Co. v. Pennsylvania,* 122 U. S., 326, which involved the validity of a tax in terms upon the gross receipts from both interstate and intrastate commerce, which tax was held to be a burden on interstate commerce.

In the case of *St. Louis, etc., R. Co. v. Arkansas,* 235 U. S., 350, the court construed a statute of Arkansas imposing a franchise tax in the same words employed in the North Carolina statute now in question, that is describing the tax as being "for the privilege of exercising its franchise in this State," and held, following a like holding by the Supreme Court of Arkansas, that the franchise intended to be taxed by the act was that which related solely to intrastate business carried on wholly within the State, that the tax was not upon the privilege of exercising franchises in interstate commerce and was therefore valid and constitutional.

It follows, therefore, that a "franchise or privilege tax" imposed by a State on an interstate railroad "for the privilege of exercising its franchise in this State" is a tax on the privilege of exercising such franchise in the business of purely intrastate commerce within that State, that that is a franchise or privilege within the power of the State to tax; and that a tax upon such privilege is valid provided it be so imposed and measured by such a value that it will not be a direct burden on interstate commerce.

As to what is a valid measure of such a tax, it is beyond doubt that it is competent for the State to measure it by and compute it upon the value of the property of the interstate carrier within the State, thus including no property without the State but only that wholly within the taxing State, and that a franchise or privilege tax so computed is not a burden on interstate commerce.

St. Louis, etc., R. Co. v. Arkansas, 235 U. S., 350;
St. Louis, etc., R. Co. v. Middlekamp, 256 U. S., 226.

In the *Arkansas Case, supra,* this court passed upon the validity of the tax system of Arkansas as relating to railroads.

Statutes of Arkansas imposed property taxes on railroads. In addition they imposed a license fee upon domestic corporations for the privilege of filing their articles of incorporation and upon foreign corporations for the privilege of doing intrastate business in Arkansas. In addition to both those taxes the statutes imposed a franchise or privilege tax, similar to the North Carolina tax now in question. Describing this franchise tax this court in its opinion said:

> "The act is entitled 'An act for an annual franchise tax on corporations doing business in the State of Arkansas.' (Acts of Arkansas, 1911, p. 67.) Its fourth, fifth, and sixth sections require each foreign corporation for profit doing business in the State, and owning or using a part or all of its capital or plant in the State, to pay 'for the privilege of exercising its franchise in this State, one-twentieth of one per cent each year thereafter upon the proportion of the outstanding capital stock of the corporation represented by property owned and used in business transacted in this State.'"

The court construed this tax to be a franchise tax for the privilege of engaging in wholly intrastate commerce within Arkansas, measured solely by reference to the property of the corporation within that State. It said:

> "We therefore accept the construction of Act No. 112, that we have quoted from the opinion of the State court, which is, in short, that it imposes an annual franchise tax upon the right to exist as a corporation or to exercise corporate powers within the State, the amount of the tax being fixed solely by reference to the property of the corporation that is within the State and used in business transacted

> within the State, and excluding any imposition upon or interference with interstate commerce. By this we understand that the franchise of a foreign corporation that is intended to be taxed is that which relates solely to intrastate business;"

and after a review of the authorities as to franchise taxes on interstate carriers the court continued:

> "Applying these principles, we have no difficulty in sustaining the tax in question as a legitimate imposition upon a foreign corporation with respect to its exercise of the privilege of transacting intrastate business in corporate form, *the tax being based upon the amount and value of its property within the State.*" (Italics ours.)

In the *Middlekamp Case,* 256 U. S., 226, an entirely similar franchise tax of Missouri, measured by the amount of the property of the carrier in the State, was held to be no burden on interstate commerce and to be valid. The act provided, as to foreign corporations:

> "Every corporation, not organized under the laws of this State, and engaged in business in this State, shall pay an annual franchise tax to the State of Missouri equal to three-fortieths of one per cent of the par value of its capital stock and surplus employed in business in this State, and for the purposes of this act such corporation shall be deemed to have employed in this State that proportion of its entire capital stock and surplus that its property and assets in this State bears to all its property and assets wherever located * * *."

This tax was in terms, as in the *Arkansas Case,* a percentage of the par value of a certain proportion of the capital stock and surplus, that used in the taxing State, but the way that proportion was measured was simply to take the value of the property in the State. The tax was therefore measured by the total amount of property of the carrier in the taxing State. The court, holding this tax constitutional and valid, said:

> "There is no contravention of the Commerce Clause. It is said that the value of the franchise taxed is derived partly from the fact that the corporation does interstate business, but that does not invalidate the tax. *St. Louis & East St. Louis Electric Ry. Co. v. Hagerman, post,* 314; *St. Louis & East St. Louis Electric Ry. Co. v. Arkansas,* 235 U. S., 350, 365. Of course the fact that the plaintiff's road was under Federal control during the year in question does not exonerate it. It was profiting by its franchises although in a different way. * * * Nothing more needs to be said concerning the relation of the act to the Constitution of the United States."

An attempt was made by the plaintiffs in these suits in the District courts to distinguish the *Arkansas Case* and they argued that it is not authority for the proposition that the entire property of an interstate carrier in the taxing State is a valid measure to be taken for a franchise or privilege tax, contending that the tax there was not measured by the property of the railroad in the State but by the proportion of its capital stock used in the State.

But this court said in that case that this amounted to measuring the franchise tax by the property in the State, because the statute, just as that construed in the *Middle-*

kamp Case, took the total property in the State as the measure of what the proportion of the capital stock used in the State was. It makes no difference whether the tax statute says in so many words that it imposes a tax of a certain per cent of the property in the State, or says a tax of a certain per cent of the proportion of the company's capital stock used in the State and uses the total property in the State as the measure of that proportion. In either case the franchise tax is measured in effect by the property in the State. And it was specifically on the assumption that it was a franchise tax measured by the property of the company in Arkansas that this court held the franchise tax of that State valid in the *Arkansas Case.*

This is in exact accord with what was held in the case of *Western Union v. Massachusetts,* 125 U. S., 530, 552, cited to this effect in the *Arkansas Case,* wherein the court held specifically that a tax nominally upon the capital stock was in effect a tax measured by the property of the corporation in Massachusetts. It was there said:

> "The tax in the present case, though nominally upon the shares of the capital stock of the company, is in effect a tax upon that organization on account of property owned and used by it in the State of Massachusetts, and the proportion of the length of its lines in that State to their entire length throughout the whole country is made the basis for ascertaining the value of that property."

Thus it is seen that a State may validly impose upon interstate carriers a franchise or privilege tax for the privilege of carrying on wholly intrastate business within the taxing State as a corporation; that a tax which in terms is

imposed "for the privilege of exercising its franchise in the State," as applied to an interstate railroad, is a tax for the privilege of carrying on wholly intrastate business within the taxing State as a corporation, and that such a tax is constitutional and valid when measured by the total property of the said railroad within the taxing State. Such a tax is not a burden on commerce and is within the power of the State to impose.

3. *Franchise or Privilege Taxes on Interstate Railroads Which are Beyond the Power of a State and Invalid.*

In the foregoing section we have seen the kinds of franchise or privilege taxes upon interstate railroads which are constitutional and valid. A brief reference to the classes of cases in which such taxes are held invalid as being in effect a burden on interstate commerce will disclose the line between those that are valid and those that are invalid, a distinction or line referred to in the *Ohio Tax Cases* as "not always easily drawn."

Thus, as was shown in *Osborne v. Florida,* the State cannot require the payment of a privilege or franchise tax as a *condition precedent* to the right of the carrier to do any kind of business in the State, for such a requirement would, if valid, stop interstate commerce, as well as intrastate commerce.

Western Union v. Kansas, 216 U. S., 1;
Ludwig v. Western Union, 216 U. S., 146;
International Paper Co. v. Massachusetts, 246 U. S., 141;
Leloup v. Mobile, 127 U. S., 640.

So it is incompetent for the State to measure its privilege or license tax by the *total capital stock* of the carrier representing property both within and without the State, and representing its total business of both interstate and intrastate commerce. A tax so measured is uniformly held to be in necessary scope and effect a direct burden on interstate commerce, even though in terms it purports to be only for the privilege of engaging in intrastate commerce.

Western Union v. Kansas, 216 U. S., 1;
Pullman Co. v. Kansas, 216 U. S., 56;
Looney v. Crane Co., 245 U. S., 178;
International Paper Co. v. Massachusetts, 246 U. S., 135.

And where such a tax is measured by the gross revenue of the carrier, which necessarily includes revenue from the business of interstate commerce as well as that from the business of intrastate commerce, it is uniformly held to be invalid as being in necessary effect a direct burden on interstate commerce, although in terms it purports to be levied on or for the privilege of engaging in intrastate commerce.

Fargo v. Michigan, 121 U. S., 230;
Philadelphia Steamship Co. v. Pennsylvania, 122 U. S., 326;
Ratterman v. Western Union, 127 U. S., 411;
Western Union v. Alabama, 132 U. S., 472;
Galveston, etc., R. Co. v. Texas, 210 U. S., 217;
Meyers v. Wells Fargo Co., 223 U. S., 298.

And an excise on telegraphic messages, including not only those from point to point within the State, but also those coming into the State from other States and those going out

of the State, is invalid as a burden on interstate commerce, except as to that part which imposes a tax on messages from point to point within the State.

Western Union v. Pennsylvania, 128 U. S., 39.

There is no conflict, however, between the foregoing cases, and the line of cases which we have referred to as holding such taxes valid when measured by the total property of the carrier *within the State,* or by the gross earnings of the carrier from intrastate business alone, or by the proportion of the total capital stock of the carrier corresponding to the ratio of the property within the State to the total property everywhere. Each of these lines of cases recognizes specifically the correctness of the other.

Thus, in the case of *Galveston, etc., R. Co. v. Texas,* 210 U. S., 217, holding invalid a State tax measured by a percentage of the *total gross earnings* of an interstate railroad, the case of *Maine v. Grand Trunk Railway,* 142 U. S., 217, wherein such a tax, measured only by the *gross earnings within the State,* was held valid, was specifically approved, distinguished, and held not to be in conflict with the decision in the *Galveston case,* nor with the similar decision in the case of *Philadelphia Steamship Co. v. Pennsylvania,* 122 U. S., 326.

And *Western Union v. Kansas,* 216 U. S., 1, which held invalid such a tax, measured by a percentage of the *entire capital stock* of an interstate carrier, representing property out of the State as well as within, and interstate business as well as intrastate, specifically approved the case of *Western Union v. Masachusetts,* 125 U. S., 530, wherein the tax was measured only by the *mileage proportion* of the capital stock

within the State. The decision in *Western Union v. Kansas* furthermore specifically approved and carefully distinguished *Osborne v. Florida, Pullman Company v. Adams, Allen v. Pullman Company,* and *Security Mutual Co. v. Previtt,* 202 U. S., 246, 248.

One other limitation upon the right of a State to impose such franchise, privilege, license, or excise tax upon the privilege of exercising franchises within the State, or upon the intrastate business, of an interstate carrier should be noted, and that is, that such a tax will be invalid as a direct burden on interstate commerce if it discriminates against foreign corporations in favor of domestic corporations of the same class, as where the statute seeks to impose such a tax on foreign railroads, but leaves domestic railroads free from such imposition.

Southern Railway Co. v. Greene, 216 U. S. 400.

Where, however, there is no such discrimination, and the tax is imposed alike upon domestic corporations and foreign corporations, it does not lie in any foreign corporation to complain that it is subjected to the same laws with the domestic corporation.

Horne Silver Mining Co. v. New York, 143 U. S., 305, 315.

New York v. Roberts, 171 U. S., 658, both of which cases were specifically distinguished in the case of *Southern Railway Co. v. Greene, supra.*

IV.

The franchise or privilege tax imposed by North Carolina on the plaintiffs and other railroads is within the power of the State to impose and is valid.

We shall now consider *seriatim* the objections raised by the plaintiffs to the validity of the franchise or privilege tax and undertake to show that it is entirely valid.

1. *It is not a property tax, but is a privilege tax.*

The first contention of the plaintiffs is that this tax is not a privilege or franchise tax, though called such in the statute, but is a property tax, and therefore amounts to double taxation of the property of railroads in violation of a supposed prohibition of double taxation in the State and in the Federal Constitutions.

They contend that any tax which is measured by property is a property tax, and that therefore this tax is not a privilege tax but is a property tax because it is measured by a percentage of the property of the taxed railroad in the State.

There can be no doubt that the Legislature of North Carolina intended to impose it as a privilege tax, and has done so if it is within its power to impose a privilege tax measured in amount by reference to property.

Section 3 of the Revenue Act of 1921, the act which imposes this tax, provides:

> "*No tax on any property* in the State shall be levied for any of the uses of the State Government. The taxes *hereinafter levied in this act* are for the expenses of the State Government. * * * and shall be collected and paid into the general fund of the State Treasurer."

It will thus be noticed that the Revenue Act starts with an express declaration of the Legislature that none of the taxes levied in and by that act is a property tax.

In the introductory section of Schedule C of that act, Section 76, it is declared:

> "Sec. 76. *Defining taxes embraced in this schedule.* "The taxes embraced in this schedule shall be listed and paid as specially herein provided, and shall be *for the privilege* of carrying on the business or doing the act named; and, if a corporation, shall be a tax for the continuance of its corporate *rights and privileges* given under its charter, if incorporated in this State; or by reason of any act of domestication, if incorporated in another State."

Section 82 (6½) in said Schedule C, the section imposing the tax, calls it "a franchise or privilege tax" and "the franchise tax, * * * for the privilege of exercising its franchise in this State."

The Legislature could not have chosen more apt words to declare that the tax was not a property tax, but that it was a privilege tax.

But the plaintiffs contend that, because the basis upon which the franchise tax is calculated is "the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year * * * for *ad valorem* taxes," it is therefore necessarily, as matter of law, a property tax, notwithstanding what the Legislature intended and declared it to be. In other words, the entire contention under this head is, that any tax which is measured by a percentage of the value of property is a property tax, no matter what the lawmaking body declares and intends it to be.

To sustain this proposition, the plaintiffs cite the cases of

Worth v. Railroad, 89 N. C., 301; *Provident Institution v. Massachusetts,* 6 Wall., 611, and other cases which hold, not that a tax which is measured by property is necessarily a property tax, but that a tax which is not measured by property, but is measured by amount of business, is not a property tax, but a franchise or privilege tax.

We have already seen, however, that this Court in the cases of *St. Louis, etc., R. Co. v. Arkansas,* 235 U. S., 350, and *St. Louis, etc., R. Co. v. Middlekamp,* 256 U. S., 226, has held valid as franchise or privilege taxes on railroads taxes measured by a certain proportion of their property within the State. And in the *Middlekamp Case* this same contention of double taxation was made by the plaintiff railroad. After the decision in those cases we do not see how it can be contended that the fact that a tax imposed as a privilege tax is measured by reference to property can change its nature from a privilege tax to a property tax, or render it invalid as a privilege tax.

We are not confined to those decisions, however. It is well settled by many cases that the fact that a tax on or for a privilege (whether called franchise, privilege, license, or excise tax) is measured by property, or its value, does not make it a property tax.

Magoun v. Ill. Trust Bank, 170 U. S., 283.
Clark v. Titusville, 184 U. S., 329.
Keeney v. New York, 22 U. S., 525.
Baltic Mining Co. v. Massachusetts, 231 U. S., 68.
Brushaber v. Union Pac. R. Co., 240 U. S., 1.
Kansas City R. Co. v. Kansas, 240 U. S., 227.
Kansas City R. Co. v. Stiles, 242 U. S., 111.
Republic Acceptance Corp. v. De Land, 275 Fed., at 630, and cases cited.

In the case of *Baltic Mining Co. v. Massachusetts, supra,* speaking of an excise tax on corporations for the privilege of engaging in intrastate commerce within the State, and measured by capital stock representing property, the Court said:

> "In these cases the ultimate contention is not that the receipts from interstate commerce are taxed as such, but that the property of the corporation, including that used in such commerce, represented by the authorized capital of the corporation, is taxed, and therefore interstate commerce is unlawfully burdened by a State statute. * * * The conclusion that the authorized capital, is only used as the measure of a tax, in itself lawful, without the necessary effect of burdening interstate commerce, brings the legislation within the authority of the State. So, if the tax is, as we hold it to be, levied upon a legitimate subject of such taxation, it is not void because imposed upon property beyond the State's jurisdiction, for the property itself is not taxed. Insofar as it is represented in the authorized capital stock, it is used only as a *measure* of taxation, and, as we have seen, *such measure may be found in property* or in the receipts from property not in themselves taxable."

And in the case of *Keeney v. New York, supra,* the court said of a tax on the privilege of transfers:

> "Wherever the amount of a tax is, as here, to be measured by the value of property, it has been earnestly argued that it was to tax the property itself, and that to ignore that feature is to put the name above the fact. But when the State decides to impose such a tax the amount must be determined by some standard. To require the same amount to be paid on all

transfers is not so fair as to impose the burden in proportion to the value of the property. An excise on transfers, therefore, does not lose that character because the amount to be paid is determined by the values conveyed. In view of the decisions in *Magoun v. Illinois Trust Bank,* 170 U. S., 283, and other cases cited, it is unnecessary to review the arguments pro and con, and again point out the distinction which has been made and sustained between excise and *ad valorem* taxes."

In the case of *Republic Acceptance Corp. v. De Land,* 275 Fed., at 639, it was said in a very well considered opinion:

"Nor does the fact that the amount of the tax to be levied * * * is measured and determined by the sliding scale (on capital stock representing property) use as the basis for the computation thereof, render it any the less an excise tax, or operate to give it the character of a property tax. *Clark v. Titusville,* 184 U. S., 329; *Kansas City R. Co. v. Botkin,* 240 U. S., 227; *Union Trust Co. v. Probate Judge,* 125 Mich., 487."

"As therefore the premise of this argument, that the tax is a property tax, is clearly unsound, the contention based thereon, to the effect that such tax lacks the uniformity required by the Michigan Constitution, is equally without merit. It follows that, so far as such contention is concerned, the claim of the defendants that it appears upon the face of the bill that the plaintiff is not entitled to the relief prayed, must be sustained."

And the fact that the final incidence of such a tax is on an individual, or a property owner, using his property in the business, does not render it a property tax.

Clark v. Titusville, 184 U. S., 329, wherein it was said by Mr. Justice McKenna:

> "Plaintiff in error, however, contends that the tax in the case at bar is a tax on property, not on the privilege to do business, because the final incidence of the tax is on the merchant, and is paid by him. But every tax has its final incidence on some individual. The effect, therefore, cannot be urged to destroy well-recognized distinctions. The tax in the case at bar is a tax on the privilege of doing business regulated by the amount of sales, and is not repugnant to the Constitution of the United States."

Thus a franchise tax of Alabama based on capital stock of a railroad doing both interstate and intrastate business was held valid and no burden on interstate commerce because it was not a property tax, but a privilege tax.

Kansas City R. Co. v. Stiles, 242 U. S., 111, following
Kansas City R. Co. v. Stiles, 240 U. S., 227, and distinguishing
Southern Railway Co. v. Greene, 216 U. S., 400, and
Western Union v. Kansas, 216 U. S., 1.

And it is elementary that when capital stock of a corporation is taken as the measure of a tax the capital stock stands for and represents the property owned by the corporation and that a tax so measured is in effect measured by the corporation's property.

A tax measured by three-fourths of one per cent of the total amount of deposits in savings banks on a certain day has been held by this Court to be a franchise tax, not a property tax. Yet no one would contend that the total of

deposits in savings banks on a certain day is not property. The Connecticut tax held to be a franchise tax was certainly measured by property.

Society for Savings v. Coite, 6 Wall., 594.

And a Massachusetts tax on the excess of market value of capital stock over the value of real estate and machinery of corporations was held to be a franchise tax, not a property tax.

Hamilton Co. v. Massachusetts, 6 Wall., 632.

A Massachusetts tax on domestic saving banks, measured by a certain per cent of the amount of deposits averaged for a period, was held to be a franchise and not a property tax.

Provident Institution v. Massachusetts, 6 Wall., 611.

It is clear, therefore, that the fact that a tax is measured by property does not make it a property tax, and that the authorities are conclusive that a tax may be a franchise or privilege tax and still may be measured by property.

As to a tax upon a corporation denominated by the Legislature a privilege fee or tax for the privilege of exercising its franchise and of transacting its business within a State, it cannot be doubted that the specific declaration of the Legislature of the purpose for which the tax is levied stamps it as an excise or privilege tax rather than a property tax.

Republic Acceptance Corp. v. DeLand, 275 Fed., 639, citing

Kansas City, etc., R. Co., v. Botkin, 240 U. S., 227;

Lusk v. Botkin, 240 U. S., 236;

Kansas City, etc., R. Co. v. Stiles, 242 U. S., 111;

Illinois Central Co. v. Mississippi R. Comm., 229 Fed., 248;
Coit, etc., Co. v. Sutton, 102 Mich., 324;
Pingree v. Auditor, 120 Mich., 95;
Union T. Co. v. Probate Judge, 125 Mich., 487;
Union Trust Co. v. Detroit Council, 170 Mich., 692;
26 Ruling Case Law, p. 35.

The franchise or privilege tax on railroads here discussed is only one of the many license, privilege, or franchise taxes, so-called, imposed by Schedules B and C of the Revenue Act (See Appendix D). It is similar and analogous to the others. The Supreme Court of North Carolina and this Court have held taxes imposed by these two schedules to be license or privilege taxes and not property taxes.

State v. French, 109 N. C., 722, 724-725;
Lacy v. Armour Packing Co., 134 N. C., 567;
Armour Packing Co. v. Lacy, 200 U. S., 226.

2. *But even if it were a property tax, it would not follow that it is unconstitutional or invalid.*

Assuming for the sake of argument, however, that the tax called by the Legislature of North Carolina a "franchise or privilege tax" must be construed to be a property tax, as the plaintiffs contend, because measured by reference to property, it would not follow that it is in violation of either the State or Federal Constitutions.

As was held in the case of *St. Louis, etc., R. Co. v. Arkansas,* 235 U. S., 350, it matters not whether such a tax be deemed a privilege tax or a tax on a privilege or right (as

the privilege of engaging in intrastate commerce) considered as property. In either aspect it is a tax on a subject matter within the power of the State to tax and is no violation of the Federal Constitution. If it would be valid under the Federal Constitution when construed as a privilege tax, construing it as a property tax could not render it invalid. It is a question of power, not of definition of terms.

The reason the plaintiffs advance why this tax, if construed as a property tax, should be deemed invalid is that they contend that it would amount to double taxation of railroads and that that is a violation of the uniformity clause of the North Carolina Constitution and of the Fourteenth Amendment.

But double taxation by a State is not forbidden by the Federal Constitution. It is well settled that nothing in that instrument or in the Fourteenth Amendment prevents the States from imposing double taxation or any other form of unequal taxation, so long as the inequality is not based on arbitrary distinction.

Davidson v. New Orleans, 96 U. S., 97, 106;
Coe v. Errol, 116 U. S., 517, 524;
Tennessee v. Whitworth, 117 U. S., 129, 136, 137;
Kidd v. Alabama, 188 U. S., 730, 732;
St. Louis, etc., R. Co. v. Arkansas, 235 U. S., 350;
Fidelity, etc., Trust Co. v. Louisville, 245 U. S., 54, 59;
Shaffer v. Carter, 252 U. S., 37, 58;
Cream of Wheat Co. v. Grand Forks, 253 U. S., 325, 330.

And we have already shown that classification together of all railroad corporations and the imposing on that class of a tax different from that imposed on other classes is competent classification and is not based on an arbitrary distinction.

Double taxation, is therefore, within the legitimate power of the State unless forbidden by the State Constitution.

Cases cited, *supra,* and in addition:

Commissioners v. Tobacco Co., 116 N. C., 441;
Belo v. Commissioners, 82 N. C., 415;
See also *Fort Smith Lumber Co. v. Arkansas,* 251 U. S., 532.

And the Supreme Court of North Carolina holds that the uniformity rule in the Constitution of that State does not take away the legislative power to levy double taxation, and that the Legislature of North Carolina has that power.

Commissioners v. Tobacco Co., 116 N. C., 441, 448;
Belo v. Commissioners, 82 N. C., 415;
State v. Wheeler, 141 N. C., 773.

It seems clear, therefore, that even if this tax were to be construed as a property tax, it could not be invalid as double taxation by reason of any conflict with the Federal Constitution, that the Supreme Court of North Carolina holds that double taxation is not forbidden by the uniformity clause of the State Constitution, that this Court will follow that holding of the State Supreme Court, and that the said tax could not be held invalid in these suits as double taxation.

There is no basis, however, we contend, for considering it a property tax. It must be construed to be what the Leg-

islature intended, to-wit, a franchise or privilege tax, and we shall consider its validity as such.

3. *It is not a tax for the privilege of engaging in interstate commerce.*

The second contention of the plaintiffs is that if this tax is to be construed as a privilege tax and not a property tax, it must be construed as a tax for the privilege of engaging in interstate commerce, and is hence invalid as being a burden on such commerce.

After these suits were started in the District Courts in 1921, there was held a special session of the Legislature of North Carolina in December of that year. This attack of the plaintiffs on the franchise or privilege tax had then been made. They had then made their contention that this tax was upon the privilege of engaging in interstate commerce, if a privilege tax. And this special session of the Legislature in December, 1921, in order to make it perfectly clear that North Carolina was making no attempt to tax the privilege of doing interstate commerce, added to the section imposing this tax the following:

> "*Provided,* that it is the intention of this section to levy upon railroads a license or privilege tax for the privilege of engaging in intrastate commerce carried on wholly within the State of North Carolina, and not a part of interstate or foreign commerce; that the tax provided for in this section is not intended to be a tax on the privilege of engaging in interstate commerce, nor is it intended to be a tax on the business of interstate commerce, nor is it intended to be a tax having any relation to the inter-

> state or foreign business or commerce in which any such railroad company may be engaged in addition to its business in this State."

And in the body of the section the language was changed so that, instead of calling the tax a "franchise or privilege tax" and "the franchise tax of each such railroad company for the privilege of exercising its franchise in this State," it now denominates the tax "the tax which every railroad company shall pay for the privilege of carrying on intrastate commerce within this State."

We understand that the plaintiffs admit that under the wording of the statute as amended by the special session of 1921 it cannot be a tax on the privilege of engaging in interstate commerce because of the specific declaration of the Legislature to the contrary.

But our contention is that these changes, made by the Legislature after the principal railroads in North Carolina had joined in bringing suits to tie up all collection of revenues from them pursuant to this statute, were made to declare the purpose of the Legislature not to tax the privilege of doing interstate commerce and that this was also a declaration of what the intention was in originally enacting the franchise or privilege tax statute.

The only question, however, upon this contention of the plaintiffs is: what do the words of the statute under which the 1921 franchise or privilege tax was levied mean as matter of law, a tax on the privilege of engaging in interstate commerce or a tax for the privilege of engaging in wholly intrastate commerce carried on entirely within North Carolina?

Those words are "the franchise tax of each such railroad company *for the privilege of exercising its franchise in this State.*" The plaintiffs contend that as matter of law the italicized words mean a tax for the privilege of engaging in interstate commerce. We contend that as matter of law they mean a tax for the privilege of engaging in that part of the business of the railroad which is purely intrastate commerce carried on wholly within the State and separate and apart from interstate and foreign commerce, just as the statute now declares after the changes in December, 1921.

We say, in the first place, that here are two constructions of the language of this statute—one which will, beyond doubt, render the statute invalid; the other, more reasonable on its face—which will render the statute constitutional. Under the most familiar principles, the Court will adopt the construction which comports with constitutionality.

Ohio Tax Cases, 232 U. S., 576.

We say, in the second place, that here is statutory language which this court has held, in at least two cases, to mean a tax for the privilege of engaging in strictly intrastate commerce within the State—not for the privilege of interstate commerce. Those two cases are *Maine v. Grand Trunk Railway*, 142 U. S., 217, and *St. Louis, etc., R. Co. v. Arkansas*, 235 U. S., 350. Both those cases construed statutes in the identical language of ours "for the privilege of exercising its franchises in the State," and held that those words meant only in intrastate commerce—not interstate commerce.

The plaintiffs argued at the hearing that *Maine v. Grand Trunk Railway Co.* had been virtually overruled, but on other phases of the decision. In no case has the construc-

tion of this particular language which appears in our statute, as it was construed in the *Grand Trunk Case*, been criticized or doubted, and in the *Arkansas Case* the same construction of the same wording in a State statute was made and the *Grand Trunk Case* followed. We cited it above as to the meaning of this language of the statute, and it is undoubted authority as to this. Besides, as we have already shown, the *Grand Trunk Case*, far from being overruled, was approved and distinguished in the case of *Galveston, etc., R. Co. v. Texas*, 210 U. S., 217.

The only respect in which the *Grand Trunk Case* has been modified or doubted is in reference to its holding that gross earnings constitute a valid measure of such a franchise or privilege tax. It has never been modified as authority for the proposition that a tax on a foreign railroad "for the privilege of exercising its franchise in the State" is a tax on the privilege of carrying on purely intrastate commerce within the State. And the *Arkansas Case* is a very recent and conclusive authority for the same proposition.

We say, in the third place, that the Legislature of North Carolina, when it first enacted the section containing this language descriptive of the franchise tax, must have taken it from the Maine statute and the Arkansas statute, both containing the same wording, and which had been passed upon and construed by this court. We say that, under the familiar rule of construction, the Legislature must be deemed to have adopted the judicial construction of these statutes together with their wording, and that therefore that wording, as it appears in our statute, means "in intrastate commerce" as much so as if those words were written in the statute.

We say, in the fourth place, that a tax levied by the Revenue Act of North Carolina, correlative with and virtually identical in terms and effect with, this tax, has already been specifically held by the Supreme Court of North Carolina to be a tax on the privilege of engaging in strictly intrastate business within the State, and not to be a tax for the privilege of engaging in interstate commerce, and hence not a violation of the commerce clause; and that this ruling of the State Supreme Court was followed and specifically approved by this Court.

Lacy v. Armour Packing Co., 134 N. C., 567;
Armour Packing Co. v. Lacy, 200 U. S., 226.

The tax construed in those cases was one of the license or privilege taxes imposed by Schedule B of the Revenue Act, which schedule was introduced by the following language in its introductory section:

> "Taxes in this schedule shall be imposed as license tax *for the privilege of carrying on the business or doing the act named.*"

And the section imposing the tax was:

> "*Packing houses.* Upon every meat packing house doing business in this State, one hundred dollars for each county in which said business is carried on."

The packing company there contended that since the tax was imposed as a license or privilege tax simply for "doing business in this State," that included interstate commerce as well as intrastate commerce and the tax was hence a tax on the privilege of engaging in interstate commerce. This contention was exactly the same in effect as that made by the

plaintiffs in these suits that since the tax is simply "for the privilege of exercising its franchise in this State" it includes exercising the franchise in interstate as well as intrastate commerce, since interstate commerce is not in terms excluded, and that the tax is therefore on the privilege of engaging in interstate commerce.

The Supreme Court of North Carolina in the case before it declared that the statute applied solely to business carried on wholly within the State, and was not a tax on the privilege of engaging in interstate commerce. And this court followed and approved that decision, saying:

> "As was said in *Osborne v. Florida,* this construction of a State statute by its highest court is not open to review, and accepting it the case plainly comes within *Kehrer v. Stewart,* 197 U. S., 60."

These decisions we deem to be conclusive that the Legislature of North Carolina, in enacting the franchise or privilege tax on railroads here in issue intended to impose a tax on the privilege of engaging in purely intrastate commerce and not on the privilege of engaging in interstate commerce, and that the meaning of the said statute is in accordance with that intention.

We say, in the fifth place, that the court cannot construe this language of the North Carolina statute as levying a tax for the privilege of engaging in interstate commerce, or a tax interfering in any way with interstate commerce, "without in effect," as was said in the *Ohio Tax Cases,* 232 U. S., 576, "denouncing the Legislature of the State as guilty of a conscious attempt to evade the obligation of the Federal Constitution." This, as the Supreme Court held in that case, a court will not do.

It follows we think clearly that the franchise or privilege tax on railroads is not a tax on the privilege of engaging in interstate commerce and has no reference to any interstate or foreign commerce but is a tax on the privilege of engaging in intrastate commerce carried on wholly within the State and separate from the railroads' other business.

4. *The payment of This Tax is not Made a Condition Precedent to the Right to Engage in Interstate Commerce Within North Carolina.*

The plaintiffs again contend, however, that the said statute makes the payment of this franchise tax a condition precedent to the doing of interstate business in the State and that it is therefore invalid under the rule of *Western Union v. Kansas,* 216 U. S., 1, *Ludwig v. Western Union,* 216 U. S., 146, *International Paper Co. v. Massachusetts,* 246 U. S., 141, and *Leloup v. Mobile,* 127 U. S., 640, to which we referred above.

This contention is predicated upon the fact that in section 82 (17) the Revenue Act provides in substance, that if a corporation, wherever organized, fails for ninety days to pay the tax levied under this statute the Commissioner of Revenue shall certify the fact to the Secretary of State and that officer shall thereupon "cancel the certificate of authority of any such foreign corporation to do business in the State" and that thereupon all the privileges and franchises "conferred upon such corporation by such certificate" shall cease and determine.

The answer to this is that this part of the statute has absolutely no application to railroads. No railroad doing busi-

ness in North Carolina, none of the plaintiffs, is required to file any such certificate of authority to do business in the State and none has any such certificate on file in the office of the Secretary of State.

The statute cannot apply to any railroad because there is no such certificate or paper in existence to be cancelled by the Secretary of State even if he should desire to do so. There is no crime or penalty contemplated by the statute, except after such cancellation. These provisions have never been held to apply to railroads and no attempt has ever been made so to apply them. The State officials in their answers expressly declare that they will never be applied to the plaintiffs (Norfolk Southern Record, 42-43), and that the statute gives the Secretary of State no authority to cancel or annul the right of the plaintiffs to carry on interstate commerce in North Carolina.

It would seem that it is early enough for the plaintiffs to complain of these provisions when some effort is made to invoke them against the plaintiffs.

Besides, the provisions referred to by the plaintiffs do not purport to establish a condition precedent to the right to do business even in the cases where they apply, but on the other hand establish a condition subsequent, provide for the taking away of privileges which have already been granted, not for the grant of privileges only upon certain conditions precedent. And in any case these provisions are bound to be correlative with the intrastate business taxed, and could not be deemed to extend to any privilege of engaging in interstate commerce, for that is not taxed.

The statute does not purport or attempt to make the payment of the franchise or privilege tax a condition precedent

to the right of the plaintiffs to carry on any kind of business in North Carolina, much less interstate commerce and it imposes no burden on such commerce.

5. *This tax is a valid tax of the privilege of engaging in intrastate commerce carried on wholly within North Carolina, calculated upon a valid measure, the total property of the railroad in North Carolina.*

The franchise or privilege tax, therefore, is not a property tax as contended by the plaintiffs. If it were it would not follow that it is invalid. It is a privilege tax. It is not, as the plaintiffs contend, a tax on the privilege of engaging in interstate commerce but is a tax on the privilege of engaging in intrastate commerce carried on wholly within North Carolina. Its payment is not made a condition precedent to the right to engage in interstate commerce nor even to the right to engage in intrastate commerce. Its collection is left to the ordinary means of enforcement of taxes.

It is not only such a privilege tax but is calculated upon what under all the authorities is a perfectly competent measure, to-wit, the property of the taxed railroad situated in North Carolina and used by it in that State. This we submit is not only a proper measure, but is one which is the safest and the furthest from any tendency to burden interstate commerce. It is not measured by gross earnings, as the tax declared invalid in the *Galveston Case*. It is not measured by the total property of the railroad within and without the State nor by its total capital stock representing such total property. It is measured only by the property actually in

North Carolina and does not look beyond the borders of that State.

The plaintiffs seek to argue that the franchise tax is a burden on interstate commerce, as measured by property in the State, because net earnings are, in part at least, represented in property values in the State. Of course, the answer to this is apparent: if it is competent to impose property taxes on values which in part represent net earnings, it is equally competent to impose otherwise competent privilege taxes measured by property values similarly representing net earnings in part. A more complete answer is, that this Court has held in the *Ohio Tax Cases, supra,* that such a privilege tax is valid even where based on gross earnings in the State, and gross earnings include interstate business and revenues, while net earnings do not.

The statute imposing this tax is not invalid as making payment of the tax a condition precedent to the right to carry on interstate commerce.

It is not a tax imposed so as to discriminate against interstate carriers or foreign corporations, such as was denounced in *Southern Railway Co. v. Greene,* 216 U. S., 400. It is a tax imposed upon all railroads, domestic and foreign, interstate and intrastate. And as we remarked in our statement at the beginning of this brief railroad corporations of each of these classes are parties plaintiff in these suits, all attacking this statute with the same contentions and on the same alleged grounds.

We submit that in imposing it the Legislature of North Carolina has studiously avoided taking any measure of the tax that could in any way operate as a burden on interstate

commerce, and instead has taken as the measure only the property of each railroad in that State.

It will be recalled that other corporations than railroads are subjected to privilege, franchise, and license taxes, and that individuals are subjected to a great number of occupation, license, and privilege taxes in no way essentially different from this privilege tax on railroads. We do not see that the plaintiffs have any valid reason to complain of this tax.

6. *There is no merit in the contention of the plaintiffs that this tax is in violation of the Constitution of North Carolina because its avails go to support the State Government and the avails of property taxes go to support local subdivisions.*

The plaintiffs argue that this tax is invalid as well as the property taxes of everybody in the State, because under the system created by the statutes of North Carolina, all avails of property taxes are applied to the support of political subdivisions of the State and the avails of the various taxes imposed by the Revenue Act, to-wit, the various license, privilege, franchise, occupation and other similar taxes there imposed, are applied to the support of the State Government. We have already shown in Part I of this brief that there is no merit in this contention and we need not advert to it further here.

7. *The State of North Carolina does not compel the plaintiffs to engage in intrastate commerce and it has, therefore, the right to tax the privilege of so doing.*

But the plaintiffs argue, just as it was argued by the plaintiff in the case of *Pullman Company v. Adams,* 189 U. S.,

420, that the State requires the plaintiffs to engage in intrastate business within the State and that therefore the State has no right to tax as a privilege this right which it imposes upon them.

In the *Pullman Company Case, supra,* this argument as we have seen was grounded on a provision of the State Constitution which made a Pullman Company a common carrier. The Pullman Company contended that that provision made it compulsory upon it to engage in intrastate commerce as well as in interstate commerce.

This Court in its opinion suggested, in the passage we have already quoted, that if the provision of the Constitution of the State of Mississippi referred to was to be read as requiring the Pullman Company to engage in intrastate commerce in Mississippi, then the question might be whether the Constitution of Mississippi did not violate the commerce clause of the Federal Constitution. It was, however, held that no such meaning could be read into that constitutional provision. And this holding was reaffirmed in *Western Union v. Kansas,* 216 U. S., 1, in the passage which we have already quoted from the opinion in that case.

Similarly the plaintiffs in these suits ground their contention that North Carolina requires them to engage in intrastate commerce within its borders and therefore cannot tax the privilege of engaging in such commerce upon Section 3515 of the Consolidated Statutes, which reads as follows:

> "Agents or other officers of railroads and other transportation companies whose duty it is to receive freights shall receive *all articles of the nature and kind received by such company for transportation* whenever tendered at a regular depot, station, wharf,

> or boat landing, and every loaded car tendered at a side track, or any warehouse connected with the railroad by a siding, and shall forward the same by the route selected by the person tendering the freight under existing laws; and the transportation company represented by any person refusing to receive such freight shall forfeit and pay to the party aggrieved the sum of fifty dollars for each day such company refuses to receive such shipment of freight, and all damages actually sustained by reason of the refusal to receive freight."

Upon its face this statute is no requirement that interstate railroads operating through North Carolina shall engage in intrastate commerce whether they wish to or not. It is simply a statute imposing a penalty as the sanction to prevent discrimination. It only purports to apply to a failure or refusal of a railroad to "receive all articles of the nature and kind received by such company for transportation." In other words, if a railroad has voluntarily entered upon the business of transporting freight in intrastate shipments entirely within North Carolina the statute imposes a penalty to prevent it from refusing to receive from one shipper freight of the kind which it is already voluntarily receiving from others.

So far as we can find it has never been held or intimated by the Supreme Court of North Carolina that the effect of this statute is to require a railroad having a line through North Carolina to engage in intrastate commerce whether it wishes to or not. And we submit that if it were held to have that meaning the question would be, as suggested in *Pullman Company v. Adams,* whether that statute was not in conflict with the commerce clause of the Federal

Constitution as requiring an interstate carrier to engage in an intrastate business which it did not desire to undertake.

It is plain, however, that the statute has no such meaning, that it applies only after the railroad has voluntarily engaged in intrastate commerce, and applies then merely to prevent discrimination in the service undertaken.

Some of the plaintiffs cited below the case of *Reid v. Railroad,* 149 N. C., 423, as holding that this statute was a mandatory requirement that railroads having lines in North Carolina must engage in intrastate commerce. There was no such holding in that case. It did not even involve a transaction in intrastate commerce. It was a case in which the Supreme Court of North Carolina held that the penalty statute applied to *interstate* shipments and was not a burden on interstate commerce. This case was reversed by this Court, reviewing it on writ of error, and holding that the penalty statute was unconstitutional and invalid as applied to interstate shipments. *Southern Railway v. Reid,* 222 U. S., 424.

There is nothing, therefore, in the statute or constitutional law of North Carolina which requires an interstate carrier having lines in and through that State to engage in intrastate commerce unless it desires to do so. If it does voluntarily undertake such intrastate business it is required not to discriminate; it must receive for shipment from one shipper all freight tendered of the kind and nature it is already receiving from others. But it is perfectly possible under North Carolina law that an interstate carrier have a line of railroad running into or through that State, use that line only for interstate business, and refuse even to engage in any intrastate business whatsoever.

It results that if an interstate carrier voluntarily engages in such intrastate commerce it is exercising a privilege within the power of that State to tax, as this court has frequently held, and the franchise or privilege tax upon this privilege, being competently measured so as not to burden interstate commerce, is within the power of the State and is valid.

V.

There is no merit in the contention that the franchise or privilege tax of the Southern, the Atlantic and Yadkin, the Seaboard, and the Atlantic Coast Line should be calculated according to Section 82 (3½) of the Revenue Act.

The plaintiffs contend finally that even if the franchise or privilege tax is within the power of the State to impose and is valid, it should nevertheless be calculated according to the rule of Section 82 (3½) of the Revenue Act. (See Appendix D.)

They contend, therefore, that whenever the report of a domestic railroad shows capital stock issued and outstanding, or the report of a foreign railroad shows the proportion of its capital stock apportionable to North Carolina, to be less than one-half of the assessed value of the property in the State, then the franchise or privilege tax on such railroad should be calculated with reference to one-half, instead of the whole, of the assessed value of the property of such railroad in the State.

And the Southern, the Seaboard, the Atlantic and Yadkin, and the Atlantic Coast Line all contend that their re-

spective reports show the proportion of their capital stock apportionable to North Carolina (all capital stock in the case of the A. & Y., a wholly intrastate carrier) to be less than one-half the assessed value of their property in the State, and that in each case, therefore, their franchise or privilege tax should be calculated as one-tenth of one per cent of one-half, instead of the whole, of the assessed value of their property in the State and that so calculated their correct franchise or privilege tax would be exactly one-half the tax which has been actually assessed against them.

The Norfolk Southern, on the other hand, contends that its proportion of capital stock apportionable to North Carolina is more than one-half the assessed value of its property in the State, that under Section 82 (3½) therefore its franchise or privilege tax is to be calculated as one-tenth of one per cent of its entire *ad valorem* assessment in the State, while the same taxes of the other plaintiffs are required by the statute to be calculated on only the half of their respective property assessments. It contends, therefore, that this distinction is arbitrary and makes the franchise or privilege tax statute invalid for discrimination. (Norfolk Southern Record, pp. 16-17.)

The defendants contend that Section 82 (3½) has no application and has never had application to any railroads whatsoever; that it applies only to the franchise taxes on ordinary corporations, foreign and domestic, imposed by Section 82 (1, 2, 3, 4, 5, 6, 7, 8, and 9), which taxes are measured by capital stock, not by property value in the State as in the case of railroads; that the franchise tax on all railroads is measured by one-tenth of one per cent of the total assessed value of property in the State, without any reference

to capital stock as a measure; that it is imposed on all railroads alike and has been correctly measured as to each of the plaintiffs without discrimination and on exactly the same basis.

It is worthy of note that four of the plaintiffs contend that they are injured and that their taxes are incorrectly calculated because not calculated according to Section 82 (3½) and that the fifth plaintiff contends that this very sub-section is arbitrary, contains an unreasonable classification and is discriminatory against it and therefore invalid under the State constitution and the Fourteenth Amendment.

This is a mere question of the construction of a State statute. A certain construction has been placed upon it by the taxing authorities of the State, by the officers of the State, and by the Attorney General of the State, in their answers in these suits. They hold that the subsection does not apply, and was never intended to apply, to railroads. This is not a constitutional question; it is not a question going to the real merits of these controversies. It is a question of State law, upon which a decision of the State Supreme Court will bind the Federal Courts. It is such a question as this Court will be extremely hesitant to decide, in the absence of a State precedent, and such a question as this Court will not notice, other material questions arising in these suits being decided in favor of the defendants.

The history of this subsection shows clearly that it has no application to railroads. Section 82 (3½) was first enacted in 1920 (Public Laws 1920, ch. 1). In that statute, in which it was first enacted, it reads: "where a report required to be made by Section 82 of Chapter 90 of the Public Laws of 1919" shows the capital stock to be less than one-half of

the assessed value of the property in or apportionable to North Carolina, then this subsection should be operative. In other words, as enacted, it applied only to corporations required to make reports under Section 82 of the Revenue Act of 1919. (Appendix A, and Appendix C, Sec. 7*b*.)

In the Revenue Act of 1919, Section 82, as we have already seen in our previous discussion of the history of the legislation, railroads were not included and were not required to make reports. The only privilege or franchise tax on railroads was imposed by Sections 77 and 78. Railroads were not required to make reports under Section 82 of the Revenue Act of 1919. In that act, Section 82 (9) specifically excluded "railroads" from the operation of any of the subsections of Section 82.

It was only in the Act of 1920 that the privilege tax on railroads was rewritten and shifted to its present position as a subsection of Section 82. The same act struck the word "railroads" out of the provision of Section 82 (9), which had expressly excluded railroads from the operation of Section 82, in order that the new Section 82 (6½) might have application. In the same statute (1920) the Legislature enacted subsection 3½ under the heading of the general franchise tax applicable to corporations in general calling it subsection 7*b*. It was not intended, however, to make it applicable to any case except "where a report" was "required to be made by Section 82" of the Revenue Act of 1919, and railroads were not within that section.

In bringing over this subsection 7*b* from the Act of 1920, in which it was first enacted, into the Act of 1921, where it now stands as 82 (3½), a purely mechanical and apparently unintentional change in the wording was made, so that it

read "where a report required to be made under the provisions of *this section,*" instead of "by Section 82 of Chapter 90 of the Public Laws of 1919." The position of this subsection under the heading Domestic Corporations, the wording as it was first enacted showing clearly that it had no application to railroads, and the fact that Section 82 (6½) is an interpolation made in Section 82 at the same time that 82 (3½) was interpolated, all prove that the redrafting of the Section 82, with its new interpolations (3½) and (6½) written into it, was not intended to change its and their meaning and application.

Any doubt as to this is foreclosed when we consider that Section 82 (3½), by its very terms, applies only to corporations whose privilege tax is measured by capital stock. Capital stock has nothing to do with the admeasurement of the privilege tax on railroads, and therefore it is logically impossible that Section 82 (3½) could apply to them. It applies to the corporations within the terms of subsections (1) to (6), the privilege or franchise tax upon which is measured by capital stock.

It is furthermore persuasive, and we think conclusive, that the Legislature never intended Section 82 (3½) to apply to railroads; that after this contention of the plaintiffs was made for the first time in the present suits the extra session of the General Assembly which met in December, 1921, a month or so after the bringing of these suits, removed Section 82 (6½) from its context as a subsection under Section 82, restored it to its former position as Section 78 of the Revenue Act, and left the Section 82 (3½) in its same place as a subsection under Section 82 and plainly having no application whatever to the franchise tax on railroads imposed by this new Section 78 (Appendix A).

We do not contend that this act of the special session enacted after the bringing of these suits had a retroactive effect to change the Revenue Act passed in the regular session earlier in the year 1921, but that it was declaratory of the legislative intention never to have made Section 82 (3½) applicable to railroad franchise or privilege taxes as surely as if the Supreme Court of the State had declared such to have been the intention.

We repeat that this is a question of construction of a State statute. Every intendment must be taken in favor of a construction which will render it valid. It is not a constitutional question. It is not a question of which the Federal courts would have any jurisdiction, aside from other matters giving them jurisdiction of these suits. If this court should hold that Section 82 (3½) applied to the franchise tax on railroads, in spite of the administrative and legislative interpretation in the State to the contrary, the State Supreme Court might decide the question differently and this court would be bound by the decision of the State court.

And we believe this court will be cautious about reversing the district courts in these cases and holding that the injunctions should have been granted to restrain collection of the franchise taxes, constitutional objections having failed, on the mere ground that this court might be of the opinion that the construction of its own statutes made by the State is incorrect and that the franchise taxes, although not unconstitutional, are incorrectly calculated.

But we think we have shown affirmatively that they have been correctly calculated and that there is no merit in the contention of the plaintiffs to the contrary.

Conclusion.

Pending the decision of this court upon these appeals a very considerable amount of the revenues for the support of the State government and of the revenues for the support of local subdivisions of North Carolina is withheld.

Although the district courts denied the interlocutory injunctions upon the pleadings and proofs they granted a stay pending these appeals which has had the effect to prevent the collection from the plaintiff railroads for the year 1921 of any part of the taxes in litigation.

The total of franchise taxes due by the plaintiffs under the North Carolina statutes amounts to $209,000 in round numbers. This is the total tax contribution of all the plaintiff railroads to the support of the State government except income taxation and not one cent of it has been paid or will be paid until these appeals are decided.

The total valuation for *ad valorem* taxes of all the property of the five plaintiffs is $209,187,576. These valuations under the system in force in North Carolina are the basis for all property taxes, the revenues from which go to the support of the counties, cities, towns, and local tax districts through which the lines of the plaintiffs run.

Of this total of $209,187,576 the plaintiffs have admitted the validity only of a total valuation of $141,740,535 and property taxes in North Carolina have been paid for 1921 by the five plaintiffs only on the admitted valuation. This leaves property taxes at the prevailing rates upon property assessed for taxation at $67,447,040 unpaid and their collection prevented pending these appeals.

We invite attention to these facts in order to show the importance of these suits to the State of North Carolina and to suggest what a large amount of that State's tax revenues are held up thereby.

In addition each of the five plaintiffs has brought a similar suit in the district court to restrain the collection of all income taxes, which under the system prevailing also go to the support of the State government.

And in addition to all these suits for the year 1921 each of the plaintiffs has now brought a similar suit to contest the validity and prevent the collection of all franchise taxes and of all property taxes on more than the admitted assessments for the year 1922.

These large amounts of the revenues of North Carolina are withheld upon allegations principally of unconstitutionality of the State's tax laws under provisions of the State and Federal Constitutions.

It is a well-settled rule of law in North Carolina, as also of this court, that courts will indulge every presumption in favor of the validity of a statute and will not declare it unconstitutional until it is made clearly to appear, beyond every reasonable doubt, that it is repugnant to the organic law.

State v. ——, 2 N. C., 28;
Trustees v. Foy, 5 N. C., 58;
Bank v. Taylor, 6 N. C., 266;
Neal v. Roberts, 18 N. C., 81;
McGwigan v. Wilmington, etc., R., 95 N. C., 428;
Phelps v. Chesson, 34 N. C., 194, 198;
Jacobs v. Smallwood, 63 N. C., 112;
N. C. Railroad Co. v. Commissioners, 82 N. C., 260;

Holton v. Board, 93 N. C., 430;
State v. Moore, 104 N. C., 714;
Green v. Owen, 125 N. C., 212, 222;
Lowery v. School Trustees, 140 N. C., 33;
State v. Williams, 146 N. C., 618;
Stephens v. Hicks, 156 N. C., 239, 245;
Whitford v. Board, 159 N. C., 160;
Luther v. Commissioners, 164 N. C., 241;
Smith v. Wilkins, 164 N. C., 135;
King v. Wilmington, etc., R., 66 N. C., 277.

It was said by Dick, J., in the case of *King v. Wilmington, etc., R., supra:*

> "The power of the courts to declare statutes unconstitutional is a high prerogative, and ought to be exercised with great caution, and they should not declare a statute void unless the nullity and invalidity of the act are placed in their judgment beyond a reasonable doubt. A reasonable doubt must be solved in favor of the legislative action and the act be sustained."

And it is a further well-settled rule of the North Carolina courts that a statute should not be held invalid if it can be so construed as to make it valid.

State v. Poole, 74 N. C., 412;
Harrison v. Styres, 74 N. C., 290;
Lowery v. Trustees, 140 N. C., 33;
Bonitz v. Board, 154 N. C., 375.

These settled rules of the North Carolina Supreme Court govern the decision by this court of all questions of constitutionality under the State Constitution.

Since this is a Federal tribunal, and the State courts have not passed upon the questions of constitutionality under the State Constitution raised in these suits, there is an additional well-settled principle governing this court in passing upon those questions. It is that the Federal courts will be very reluctant to declare a State statute violative of the State Constitution before that question has been considered by the State courts, and that this reluctance is particularly strong where the statute is a tax statute.

Coulter v. Louisville, etc., R. Co., 196 U. S., 599, 609;
Michigan Central R. Co. v. Powers, 201 U. S., 245;
Otis Co. v. Ludlow Mfg. Co., 201 U. S., 140.

In the *Michigan Central R. Case, supra*, it was said by this court, Mr. Justice Brewer writing the opinion:

> "Undoubtedly, a Federal court has the jurisdiction, and when the question is properly presented it may often become its duty to pass upon alleged conflict between a statute and a State constitution, even before the question has been considered by the State tribunals. All objections to the validity of the act, whether springing out of the State or of the Federal Constitution, may be presented in a single suit and call for consideration and determination. At the same time, the Federal courts will be reluctant to adjudge a State statute to be in conflict with the State Constitution before that question has been considered by the State tribunals. *Especially is this true when the statute is one affecting the revenues of the State and therefore of public interest.*"

That the same rule as to the presumption of constitutionality under the Federal Constitution obtains, and that a State

taxing statute must be shown to be utterly repugnant to the Federal Constitution before it may be held unconstitutional for such repugnance, is sufficiently shown by quotation of the following passage from the opinion of this court in the case of *Henderson Bridge Co. v. Henderson,* 173 U. S., 592, at 614:

> "But in order to bring taxation imposed by a State, or under its authority, within the scope of the Fourteenth Amendment of the National Constitution, the case should be so clearly and palpably an illegal encroachment upon private rights as to leave no doubt that such taxation by its necessary operation is really spoliation under the guise of exerting the power to tax. As an act of Congress should not be declared unconstitutional unless its repugnancy to the supreme law of the land is too clear to admit of dispute, so a local regulation under which taxes are imposed should not be held by the courts of the Union to be inconsistent with the National Constitution unless that conclusion be unavoidable. All doubt as to validity of legislative enactments must be resolved, if possible, in favor of the binding force of such enactments."

The holding of this case in this regard was specifically reaffirmed and applied in the very recent case of *Dane v. Jackson,* 256 U. S., 589.

We respectfully submit that under these and the other authorities which we have cited throughout this brief the plaintiffs in these suits have made no such showing of unconstitutionality or illegality of the taxes sought to be restrained as would justify the Federal courts in so declaring them and in staying the arm of the State of North Carolina in its most essential power of raising revenue.

On the other hand we think we have affirmatively shown that each of the taxes here sought to be restrained is constitutional, legal, and valid, and that the decree of the district courts ought to be affirmed, and the State of North Carolina allowed to proceed with the collection of needed taxes from the plaintiff corporations.

Respectfully submitted,

JAMES S. MANNING,
Attorney General of North Carolina;
FRANK NASH,
Assistant Attorney General of North Carolina,
Solicitors for the Appellees.

GEORGE H. BROWN,
WM. P. BYNUM,
LOCKE CRAIG,
THOS. D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel for the Appellees.

APPENDIX A.

Extracts from Chapter 90, Laws 1919, Being the Revenue Act of 1919.

"SEC. 3. *Rate.*

There shall be levied and collected annually an *ad valorem* tax of eleven and two-thirds cents for State purposes, four cents for pensions and thirty-two cents for public schools, making forty-seven and two-thirds cents on every one hundred dollars value of real and personal property in this State required to be listed in 'An Act to provide for the assessment of property and collection of taxes,' (the Machinery Act) subject to exemption made by law."

* * *

"SCHEDULE C.

"SEC. 76. *Defining taxes embraced in this schedule.*

The taxes embraced in this schedule shall be listed and paid as specially herein provided, and shall be for the privilege of carrying on the business of doing the act named; and, if a corporation, shall be a tax for the continuance of its corporate rights and privileges given under its charter, if incorporated in this State, or by reason of any act of domestication, if incorporated in another State, and shall be subject to other regulations mentioned in section twenty-six under Schedule B."

SEC. 77. *Privilege tax on railroads.*

Every steam railroad company and every person or agency operating a steam railroad in this State shall, on or before the thirtieth day of July in each year, make and return to the State Auditor, in such form and upon such blanks as shall be furnished by him, a true statement of the gross earnings of their respective roads for the preceding year ending the thirtieth day of June; of the number of miles of road operated by each such company or person, and the number of miles in the State, and the gross earnings per mile per annum during such year; which statement shall be verified by the oath of the secretary and treasurer of such companies, or of the person so operating such railroad, the State Auditor shall certify said amount to the State Treasurer.

SEC. 78. *Rate of taxation.*

The annual license tax for operating such railroads within the State shall be as follows: When gross earnings per mile are one thousand dollars or less per year, a tax of two dollars per mile; when gross earnings per mile exceed one thousand dollars per year but do not exceed two thousand dollars, a tax of four dollars per mile; when gross earnings per mile exceed two thousand dollars per year, but do not exceed three thousand, a tax of six dollars per mile; when gross earnings per mile are in excess of three thousand dollars per year and not over five thousand dollars per year, a tax of eight dollars per mile; when gross earnings exceed five thousand dollars per mile per year, a tax of ten dollars per mile. The tax imposed by this section shall be paid to the State Treasurer at the time of making the report provided in section seventy-seven. No county, city, or town shall be allowed to collect any tax under this section.

SEC. 79. *Privilege tax on express companies.*
(Practically as in Revenue Act of 1921.)
* * *

SEC. 79a. *Rate of taxation.* (On Express Companies.)
* * *

SEC. 80. *Telegraph companies.*
(As in Revenue Act of 1921, except tax two dollars instead of five per mile.)
* * *

SEC. 81. *Telephone companies.*
(As in Revenue Act of 1921, except two and one half per cent instead of three per cent of gross receipt from intrastate commerce.)
* * *

SEC. 82. *Franchise tax on corporations.*
(Subsections 1, 2, 3, 4, 5, 6, 7, and 8, as in Revenue Act of 1921, except tax of one-twenty-fifth of one per cent instead of one-tenth. No subsection 3½ nor 6½.)
Subsection 9 as in Revenue Act of 1921 except including the word "railroad" in its exception.

APPENDIX B.

Extracts from the Revaluation Act, Chapter 84, Laws of 1919.

An Act to Provide for the Listing and Valuing of All Property, Real, Personal and Mixed, at Its Real Value in Money.

The General Assembly of North Carolina do enact:

SECTION 1. That chapter two hundred and thirty-four of the Public Laws of one thousand nine hundred and seventeen, entitled "An act to amend chapter two hundred and eighty-six of the Public Laws of one thousand nine hundred and fifteen, in relation to the assessment of property and the collection of taxes," be continued in full force and effect for the listing and valuing of all property for the year one thousand nine hundred and nineteen, and that the said act shall continue in full force and effect, except in so far as the said act may be revised and amended by this session of the General Assembly, and except in so far as it may be in conflict with the provisions of this act, and in all such cases where there may be such conflict the provisions of this act shall govern: *Provided*, the valuations lawfully fixed on real property in the year one thousand nine hundred and fifteen, except where such valuations have been or may be in the year one thousand nine hundred and nineteen changed on account of structures erected or destroyed since the valuation of one thousand nine hundred and fifteen, or otherwise changed according to law, shall remain the valuation of such real property for the year one thousand nine hundred and nineteen.

SEC. 2. That for the purpose of making a complete list of all the property of every citizen of the State, real, personal and mixed, and of having all of such property valued in accordance with the rule laid down in the Constitution of the State at its true value in money, and to be adopted and used as the basis of all taxes levied by the State, counties, cities, towns and other taxing districts of the State for the year one thousand nine hundred and twenty, the machinery hereinafter set out is provided.

TAX RATES.

SEC. 3. The assessment made under the provisions of this act shall not be used as the basis for computation of taxes unless and until the same has been approved by the General Assembly and until the

tax rates levied by the State have been revised by the General Assembly, and the tax rates levied by the counties, cities, towns and special tax districts of the State have been revised under rules to be laid down by the General Assembly, and such rates shall in all cases be so adjusted that an increase in revenue from the general property tax of not more than ten per cent shall be levied and collected in the year one thousand nine hundred and twenty than was levied and collected in the year one thousand nine hundred and nineteen in the State, and in all counties, cities, towns and special tax districts in the State. The rates so levied in one thousand nine hundred and twenty shall in all cases become the maximum rates that can be levied by the counties, cities, towns and special tax districts in any year thereafter until authority is given by the General Assembly to increase them: *Provided*, that fractions of cents may be disregarded in fixing the final modified rate of tax by the State, counties, municipalities and all other tax districts.

SEC. 4. *How property shall be valued.*

All property, real, personal and mixed, shall be valued from best information obtainable according to its true value in money; that is to say at the price for which such property would sell for cash if voluntarily offered for sale by the owner thereof, and not at the price which might be realized if such property were sold at forced sale. In determining the value, the assessor shall consider as to each price of property its advantage of location, buildings or other improvements, quality of soil, quantity of standing timber, water privileges, water-power, mines, minerals, quarries, or other valuable deposits known to be available therein, and their value.

* * * * * * *

SEC. 7. *Organization for revaluation.*

The organization for making the revaluation provided for in this act shall be:

The State Tax Commission as provided for in chapter two hundred and thirty-four of the Public Laws of one thousand nine hundred and seventeen.

A district supervisor for each of ten districts, the formation of the districts to be arranged by the State Tax Commission.

A county supervisor for each county.

One clerk or assistant supervisor for each county having total taxable values for the year one thousand nine hundred and eighteen of five million dollars, and one additional clerk as assistant supervisor for each additional five million dollars, and as many others as may be approved by the Board of County Commissioners.

A county board of appraisers and review, of which the county supervisor shall be chairman, and two other members to be appointed as hereinafter provided.

* * * * * * *

SEC. 25. *When to be completed.*

The listing and revaluation of all real and personal property herein provided for shall be completed in each county not later than the first day of May, in one thousand nine hundred and twenty, and each year thereafter, and complete abstracts of such lists, by townships, and in such forms as the State Tax Commission shall prescribe, shall be mailed to the State Commission by the county supervisor not later than the fifteenth day of May, one thousand nine hundred and twenty, and each year thereafter.

SEC. 26. *Equalization or revaluation.*

The State Tax Commission shall have the authority as a State Board of Equalization given in chapter two hundred and thirty-four of the Public Laws of one thousand nine hundred and seventeen, and it shall have authority to make such investigation, through its district supervisors, county supervisors or special examiners as may be necessary to determine if the list returned for each county is a complete list, and if the valuations returned have been made as required by this act. If property is found that has not been returned it shall order such property placed on the list, and if it is found that the property in any county had been valued either higher or lower than required by this act it may order a revaluation in such county, or require by general order that a percentage increase or decrease be made for the year in which such order is made, but shall in that case order a complete revaluation of all such property at some time during the next ensuing year, to the end that any possible injustice that may have been done by the percentage increase or decrease may not be continued. If it is found necessary to order a revaluation in any county the State Tax Commission shall designate both the county supervisors and the county board of appraisers and review, by whom the reassessment shall be made, and the expense of such revaluation shall be borne by the county, and is hereby declared to be a necessary expense of such county.

* * * * * * *

SEC. 31. *Railroads, telegraph, telephone, street railway companies.*

As of the first day of May, one thousand nine hundred and nineteen, the State Tax Commission shall make a complete revaluation of the property of all railroad, telegraph, telephone and street railway companies, to be used as the basis for computing taxes for such companies for the years one thousand nine hundred and twenty, one thousand nine hundred and twenty-one, one thousand nine hundred and twenty-two and one thousand nine hundred and twenty-three, such revaluation to be made in accordance with the general rule and intent and purpose of this act as to all other property. The commission shall have the right to require all information required by chapter two hundred and thirty-four of the Public Laws of one thousand nine hundred and seventeen to be furnished by such companies, and also a sworn estimate, by a responsible officer of every such company of the cost of reproduction of the properties of such companies new, including side-tracks, double-tracks, and all property owned by such companies in this State, less reasonable depreciation for such of its properties as have depreciated in value, and shall also include the present value of all real estate used as rights of way, including depot sites, yards, terminals and otherwise. All properties of this class that have been operated by the United States Government shall report the earnings during such period of operation and also the compensation paid, or agreed to be paid, for their use, and if no agreement has been made, the amount of compensation asked for by the owners.

APPENDIX C.

Extracts from the Act of the Special Session of 1920 Approving and Adopting as the Basis for Taxation the Revaluations Made Under the Revaluation Act.

Chapter 1, *Laws Extra Session*, 1920.

An Act to Revise and Limit Tax Rates for the Year 1920 *in Compliance With Provisions of the Revaluation Act; to Provide Additional Revenue for the State From Franchise and License Taxes, and for Other Purposes.*

The General Assembly of North Carolina do enact:

SECTION 1. That the assessment or valuation of property made under the provisions of chapter eighty-four of the Public Laws of

one thousand nine hundred and nineteen is hereby approved by the General Assembly and adopted as the basis for the levy of tax rates by the State and by all subdivisions of the State for which taxes are levied for the year one thousand nine hundred and twenty, and the valuation of real property so fixed shall be adopted for the years one thousand nine hundred and twenty-one, one thousand nine hundred and twenty-two, and one thousand nine hundred and twenty-three, except as such valuations may be hereafter changed according to law.

SEC. 2. That section two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen entitled "An Act to Raise Revenue" be repealed and the following substituted for section two of that act:

"SECTION 2. Poll and property tax.

"That no tax on property or polls shall be levied for the year one thousand nine hundred and twenty for the use of the State or for the State pension fund. There shall be levied and collected for the year one thousand nine hundred and twenty for the benefit of the State public school fund an ad valorem tax of thirteen cents on every one hundred dollars value of real and personal property in this State required to be listed by the revenue laws of the State and on each taxable poll or male between the ages of twenty-one and fifty years, except the poor or infirm whom the county commissioners may declare and record fit subjects for exemption, there shall be levied and collected for the year one thousand nine hundred and twenty a tax of thirty-nine cents."

SEC. 3. That section three of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be repealed and designated as "obsolete."

SEC. 4. That the taxes levied in the foregoing section two shall be collected and paid into the State Treasury for the benefit of the public school fund in the manner provided by law for the collection and settlement of State taxes.

* * * * * * *

SEC. 7*a*. Franchise tax on corporations.

That the franchise tax provided in section eighty-two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be amended by striking out of section eighty-two (3) and of section eighty-two (8) the words "one twenty-fifth of one per cent" where they appear in said sections, and substituting in lieu

thereof the words "one-tenth of one per cent," and by striking out of line twelve of section eighty-two (3) and of line ten of section eighty-two (8) the word "five" and inserting in lieu thereof the word "ten."

SEC. 7b. That where a report required to be made by section eighty-two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen to the State Tax Commission by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year one thousand nine hundred and twenty, or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under the rules laid down in section eighty-two of the Revenue Act to be less than half of the assessed value for taxation of all the property of such company in this State for the year one thousand nine hundred and twenty, the measure of the extent to which the corporate franchise of any such corporation is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation for the year one thousand nine hundred and twenty in this State.

* * * * * * *

SEC. 7d. Privilege or franchise tax on railroads.

That sections seventy-seven and seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be repealed and that section eighty-two (9) of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be amended by striking out the third line of the said subsection the word "railroad"; that section eighty-two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be amended by inserting a new subsection to be designated as section eighty-two (6½) as follows:

SECTION 82 (6½)—Railroads. Every railroad company doing business in this State shall on or before the first day of October, one thousand nine hundred and twenty, and on or before the thirtieth day of July annually thereafter, make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which

report the State Tax Commission shall ascertain and certify to the State auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one (0.1%) per cent of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for on or before the first day of October, one thousand nine hundred and twenty, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State auditor and treasurer for collection. No county, city or town shall be allowed to collect any taxes under this section. The tax imposed by this section shall be in addition to the tax imposed by section seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen, prior to the ratification of this act, only in so far as the tax imposed by this section exceeds the tax imposed by section seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen, and if the tax imposed by section seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen for the year one thousand nine hundred and twenty have been paid by any railroad company such amount so paid shall be credited on the tax imposed by this section.

There follow sections changing the rates of the privilege taxes on express companies, telegraph companies, telephone companies, and chair and sleeping cars, from those provided in the Revenue Act of 1919 to those provided in Revenue Act of 1921, Appendix D.

APPENDIX D.

Extracts from the Revenue Act of 1921, With Quotations of Titles from Schedules B and C Showing the Variety of Privilege, License, Occupation, and Excise Taxes Other Than Corporation Franchise Taxes Imposed by North Carolina.

An Act to Raise Revenue.

The General Assembly of North Carolina do enact:

SCHEDULE A.

SECTION 1. *Taxes payable in national currency.*

The taxes hereinafter designated are payable in the existing national currency, and except as otherwise provided shall be for the calendar year in which they become due.

SEC. 2. *Poll tax.*

There shall be levied by the board of county commissioners in each county a tax of two dollars on each taxable poll or male between the ages of twenty-one and fifty years, except the poor and infirm, whom the county commissioners may declare and record fit subjects for exemption. The taxes levied and collected under this section shall be for the benefit of the public school fund of the county, and for the support of the poor, but not more than twenty-five per cent of the tax may be used for the latter purpose.

SEC. 3. *State taxes.*

No tax on any property in the State shall be levied for any of the uses of the State government. The taxes hereinafter levied in this act are for the expenses of the State government, the appropriations to its educational, charitable, and penal institutions, pensions for Confederate soldiers and widows, the interest on the debt of the State, an equalizing fund for public schools, and other specific appropriations made by law, and shall be collected and paid into the general fund of the State treasurer.

* * * * * * *

Inheritance Tax.

SCHEDULE AA.

* * * * * * *

SCHEDULE B.

SEC. 26. *Defining taxes under this schedule.*

Taxes in this schedule shall be imposed as license tax for the privilege of carrying on the business or doing the act named, and nothing in this act contained shall be construed to relieve any person or corporation from the payment of tax as required in the preceding schedule. The license issued under this schedule shall be for twelve months and shall expire on the thirty-first day of May of each year. Such license thus obtained shall be a personal privilege, and shall not be transferable nor any abatement in the tax allowed; and unless otherwise provided in the section levying the tax, the tax levied for the use and benefit of the State shall be collected in each county in which the business is conducted, except as otherwise herein provided. Whenever in this act a tax is graduated with reference to the population of the city or town in which the privilege is exercised, the minimum tax provided in such section shall be applied to the same business or privilege when conducted or exercised outside of a municipality.

SEC. 27. *Theaters.*
* * *

SEC. 28. *Traveling theatrical companies.*
* * *

SEC. 29. *Circuses, menageries, wild west, dog and pony shows, etc.*
* * *

SEC. 31. *Attorneys, physicians, dentists, etc.*
* * *

SEC. 32. *Real estate and rent-collecting agents.*
* * *

SEC. 32*a*. *Real estate auction sales.*
* * *

SEC. 33. *Coal dealers.*
* * *

SEC. 34. *Collecting agencies.*
* * *

SEC. 34a. *Dealers in second-hand clothing.*

* * *

SEC. 34b. *Undertakers and embalmers, and retail dealers in coffins.*

* * *

SEC. 35. *Dealers in horses and mules.*

* * *

SEC. 36. *Phrenologists.*

* * *

SEC. 37. *Bicycle dealers.*

* * *

SEC. 38. *Commission merchants and persons selling stock in foreign corporations.*

* * *

SEC. 39. *Ship brokers.*

* * *

SEC. 40. *Pawnbrokers.*

* * *

SEC. 41. *Livery stables.*

* * *

SEC. 42. *Sewing machines.*

* * *

SEC. 43. *Feather renovators.*

* * *

SEC. 44. *Peddlers.*

* * *

SEC. 45. *Mercantile agencies.*

* * *

SEC. 46. *Gypsies or fortune-tellers.*

* * *

SEC. 47. *Lightning rod agents.*

* * *

SEC. 48. *Hotels.*

* * *

SEC. 48a. *Restaurants, etc.*

* * *

SEC. 49. *Cotton compresses.*
* * *

SEC. 50. *Billiard and pool tables, and bowling alleys.*
* * *

SEC. 51. *Gift enterprises; prize photographs.*
* * *

SEC. 52. *Slot machines.*
* * *

SEC. 53. *Bagatelle tables, etc.*
* * *

SEC. 54. *Stockbrokers.*
* * *

SEC. 55. *Bottling works.*
* * *

SEC. 56. *Packing houses.*
* * *

SEC. 57. *Newspaper contests.*
* * *

SEC. 58. *Persons, firms, or corporations selling certain oils.*
* * *

SEC. 59. *Automobiles for hire.*
* * *

SEC. 60. *Building and loan associations.*
* * *

SEC. 61. *Pressing clubs.*
* * *

SEC. 61*a*. *Shoe shine stands.*
* * *

SEC. 62. *Tobacco warehouses.*
* * *

SEC. 63. *Newsdealers on trains.*
* * *

SEC. 64. *Soda fountains and venders of carbonated drinks.*
* * *

SEC. 65. *Dealers in patent rights and formulas.*
* * *

SEC. 66. *Stallions and jacks.*
* * *

SEC. 67. *Insurance companies.*
* * *

SEC. 67a. *Morris Plan companies.*
* * *

SEC. 68. *Dealers in cap pistols, fireworks, etc.*
* * *

SEC. 69. *Pianos and organs.*
* * *

SEC. 70. *Cigarette and cigar dealers and manufacturers of cigarettes and cigars.*
* * *

SEC. 71. *Laundries.*
* * *

SEC. 71a. *Garages.*
* * *

SEC. 72. *Manufacturers of automobiles.*
* * *

SEC. 73. *Emigrant agents.*
* * *

SEC. 74. *Plumbers, steam and gas pipe fitters.*
* * *

SEC. 75. *Trading stamps.*
* * *

SCHEDULE C.

SEC. 76. *Defining taxes embraced in this chedule.*

The taxes embraced in this schedule shall be listed and paid as specially herein provided, and shall be for the privilege of carrying on the business or doing the act named; and, if a corporation, shall be a tax for the continuance of its corporate rights and privileges given under its charter, if incorporated in this State; or by reason of

any act of domestication, if incorporated in another State, and shall be subject to other regulations mentioned in section twenty-six under Schedule B.

SEC. 77. *Privilege tax on chair and sleeping cars.*
* * *

SEC. 78. *Obsolete.*
* * *

SEC. 79. *Privilege tax on express companies.*
* * *

SEC. 79a. *Rate of taxation* (on express companies).
* * *

SEC. 80. *Telegraph companies.*
* * *

SEC. 81. *Telephone companies.*
* * *

SEC. 82. *Franchise tax on corporations.*

Domestic corporations. Between the first day of May and the first day of July, one thousand nine hundred and thirteen, and annually thereafter during the month of May, each corporation organized under the laws of this State shall make a report in writing to the State Tax Commission in such form as the commission may prescribe.

SEC. 82. (1). Such report shall be signed and sworn to before an officer authorized to administer oaths, by the president, vice-president, secretary, or general manager of the corporation, and forwarded to the Commission.

SEC. 82 (2). Such report shall contain—

(a) The name of the corporation.

(b) The location of its principal office.

(c) The name of the president, secretary, treasurer, and members of the board of directors, with postoffice addresses of each.

(d) The date of the annual election of officers.

(e) The amount of authorized capital stock and the par value of each share.

(f) The amount of capital stock subscribed, the amount of capital stock issued and outstanding, and the amount of capital stock paid up.

(g) The nature and kind of business in which the corporation is engaged, and its place or places of business.

(h) The change or changes, if any, in the above particulars made since the last annual report.

SEC. 82 (3). Upon the filing of the report provided for in the last three preceding subsections, the Commission, after finding such report to be correct, shall, on or before the first Monday of August, determine the amount of the subscribed or issued and outstanding capital stock of each such corporation. On the first Monday in August, or as soon thereafter as practicable, the Commission shall certify the amount so determined by it to the Auditor of the State, who shall charge for collection on or about August fifteenth, as herein provided, from such corporation, a fee of one-tenth of one per cent upon its subscribed or issued and outstanding capital stock, which fee shall not be less than ten dollars in any case. Such fee shall be payable to the Treasurer of the State on or before the first day of the following October. No county, city, or town shall have the power to levy any franchise tax under this section.

SEC. 82 (3½). That where a report required to be made under the provisions of this section to the State Tax Commission by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which report is made, or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under the rules laid down in section 82 of this act to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which such report is made, the measure of the extent to which the corporate franchise of any such corporation is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation in this State.

SEC. 82 (4). *Foreign corporations.* Annually during the month of July, each foreign corporation doing business in this State, and owning or using a part of all of its capital or plant in this State, and subject to compliance with all other provisions of law, and in addition to all other statements required by law, shall make a report in writing to the commission in such form as the commission may prescribe.

SEC. 82 (5). Such report shall be signed and sworn to before an officer authorized to administer oaths, by the president, vice president, secretary, superintendent, or managing agent in this State and forwarded to the Commission.

SEC. 82 (6). Such report shall contain—

(*a*) The name of the corporation and under the laws of what State or county organized.

(*b*) The location of its principal office.

(*c*) The names of the president, secretary, treasurer, and members of the board of directors, with the post office address of each.

(*d*) The date of the annual election of officers.

(*e*) The amount of authorized capital stock, and the par value of each share.

(*f*) The amount of capital stock subscribed, the amount of capital stock issued, and the amount of capital stock paid up.

(*g*) The nature and kind of business in which the company is engaged, and its place or places of business, both within and without the State.

(*h*) The name and location of its office or offices in this State, and the name and address of the officers or agents of the corporation in charge of its business in this State.

(*i*) The value of the property owned and used by the company in this State, where situated, and the value of the property owned and used outside of this State, and where situated.

(*j*) The volume of business done by the company in this State.

(*k*) The volume of business done by the company outside of the State, and where the said business is done.

(*l*) The change or changes, if any, in the above particulars, made since the last annual report.

SEC. 82 (6½). *Railroads.* Every railroad company doing business in this State shall annually on or before the thirtieth day of July make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be

found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one per cent (0.1%) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State auditor and treasurer for collection. No county, city or town shall be allowed to collect any taxes under this section.

SEC. 82 (7). Upon the filing of the report provided for in subsections four, five, and six, the commission, from the facts thus reported, and any other facts coming to its knowledge bearing upon the question, shall, on or before the first Monday in September, assess and fix the proportion of the subscribed or issued and outstanding capital stock of the company represented by its property or business in this State, and certify the same to the auditor of the State on or before the first Monday in October.

SEC. 82 (8). On or before October fifteenth the auditor of State shall charge for collection, as herein provided, annually from such company, in addition to the initial fees otherwise provided for by law, for the privilege of exercising its franchise in this State, a fee of one-tenth of one per cent upon the proportion of the subscribed or issued and outstanding capital stock of the corporation represented by property owned and used for or business transacted in this State as found and certified by the State Tax Commission, which fee shall not be less than ten dollars in any case. Such fee shall be payable to the treasurer of the State on or before the first day of the following December. No county, city or town shall have the power to levy any franchise tax under this section.

SEC. 82 (9). That nothing in the nine preceding subsections of this act shall apply to banks, insurance companies, fraternal, beneficent associations, building and loan associations, express, telephone or telegraph companies, or other corporations, upon which a franchise tax may be levied in other sections of this act.

(There follow certain administrative provisions and then, beginning with Section 100, follows Schedule D, the Income Tax on individuals and corporations.)

APPENDIX E.

Amendments to the Revenue and Machinery Acts Passed by the Special Session of the Legislature in December, 1921.

An Act to Amend Chapter 34 of the Public Laws of 1921, Being An Act to Raise Revenue, Relative to Privilege Tax and to Income Tax on Railroads.

The General Assembly of North Carolina do enact:

SECTION 1. That chapter thirty-four, Public Laws of one thousand nine hundred and twenty-one, section seventy-eight, be and the same is hereby amended by striking out the word "obsolete" and by inserting the amended section hereinafter set forth in section two of this act.

SEC. 2. That chapter thirty-four, Public Laws of one thousand nine hundred and twenty-one, section eighty-two, subsection six and one-half (6½), be and the same is hereby amended so as to read as hereinafter set forth in this section, and as so amended the said subsection six and one-half be and it is hereby transposed from the said section eighty-two to section seventy-eight of the said chapter, to stand as section seventy-eight of the said chapter, and to read as follows, to wit:

PRIVILEGE TAX ON RAILROADS.

Every railroad company doing business in this State shall annually, on or before the thirtieth day of July, make and return to the Commissioner of Revenue, in such form and upon such blanks as shall be required and furnished by him, and giving such information as he shall require for the purpose of carrying out the provisions of this section, a report upon which the Commissioner of Revenue shall ascertain and certify to the State Auditor the value upon which the amount of tax to be paid by any such railroad as a license or privilege tax shall be calculated. The value upon which such calculation shall be made by the State Auditor, and the measure of the extent to which every such railroad company is carrying on intrastate commerce within the State of North Carolina, shall be the value of the total property, tangible and intangible, in this State, of each such railroad company as assessed for *ad valorem* taxation for the year in which such report is made. The tax which every railroad company shall

pay for the privilege of carrying on intrastate commerce within this State shall be one-tenth of one per cent of the value so ascertained and certified by the Commissioner of Revenue, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for it shall be the duty of the Commissioner of Revenue to make an approximation from the reports and records on file in the State Department of Revenue of the value upon which the amount of tax due by the said company under this section shall be calculated, and to certify the said value to the State Auditor. Upon that value the State Auditor shall then calculate the amount of the said tax, as hereinbefore provided, and shall certify the same to the State Treasurer for collection. No county, city, or town shall be allowed to collect any taxes under this section: *Provided*, That it is the intention of this section to levy upon railroads a license or privilege tax for the privilege of engaging in intrastate commerce carried on wholly within the State of North Carolina and not a part of interstate or foreign commerce; that the tax provided for in this section is not intended to be a tax on the privilege of engaging in interstate commerce, nor is it intended to be a tax on the business of interstate commerce, nor is it intended to be a tax having any relation to the interstate or foreign business or commerce in which any such railroad company may be engaged in addition to its business in this State.

SEC. 3. That chapter thirty-four, Public Laws of one thousand nine hundred and twenty-one, section eighty-two, subsection nine (9), be and the same is hereby amended by inserting the word "railroads" in line two thereof between the words "to" and "banks."

An Act to Amend Chapter 38, *Public Laws of* 1921, *in Relation to the Assessment of Property and the Collection of Taxes of Railroads.*

The General Assembly of North Carolina do enact:

SECTION 1. That chapter thirty-eight, Public Laws of nineteen hundred and twenty-one, known as the Machinery Act of one thousand nine hundred and twenty-one, section sixty-five, be and the same is hereby amended by adding to the said section sixty-five a second proviso, as follows, to wit: *Provided further*, That railroads subject to the provisions of this act shall in every instance have the same right of appeal from any assessment, ruling, finding, order, or other action by the Commissioner of Revenue as is provided for and given to other corporations in section forty-three of this act, and under the same rules and conditions prescribed in the said section.

SEC. 2. This act shall be in force and effect from and after its ratification.

Ratified this the 15th day of December, A. D. 1921.

An Act to Refund Taxes Illegally Collected and Paid Into the State Treasury.

The General Assembly of North Carolina do enact:

SECTION 1. Whenever taxes of any kind are or have been through clerical error, or misinterpretation of the law, or otherwise, collected and paid into the State Treasury in excess of the amount legally due the State, the State Auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certificate of the head of the department through which said taxes were collected or his successor in the performance of the functions of that department, with the approval of the Attorney General, and the Treasurer shall pay the same out of any funds in the treasury not otherwise appropriated: *Provided*, Demand is made for the correction of such error or errors within two years from the time of such payment: *Provided further*, That claims which have arisen within five years next preceding the ratification of this act shall be presented and made within two years from the ratification of this act.

SEC. 2. This act shall be in force and effect from and after its ratification.

Ratified this the 19th day of December, A. D. 1921.

Office Supreme Court, U. S.
FILED
MAY 15 1922
WM. R. STANSBURY
CLERK

No. 9[illegible]368

IN THE

Supreme Court of the United States

SOUTHERN RAILWAY COMPANY,
Appellant,
vs.
A. D. WATTS, ET AL.,
Appellee.

No.....
In Equity.

Motion for Temporary Restraining Order Pending Appeal to Supreme Court under Section 266 of the Judicial Code of the United States.

PRESS OF THE BYRNE COMPANY, WASHINGTON

IN THE

SUPREME COURT OF THE UNITED STATES

SOUTHERN RAILWAY COMPANY, *Appellant,* *vs.* A. D. WATTS, ET AL., *Appellee.*	No..... In Equity.

Motion for Temporary Restraining Order Pending Appeal to Supreme Court under Section 266 of the Judicial Code of the United States.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now, appellant, Southern Railway Company, by its attorneys, representing to the Court that it has appealed to the Supreme Court of the United States from an order heretofore entered

herein on March 18, 1922, by the District Court of the United States for the Western District of North Carolina, denying appellant's application for an interlocutory injunction, which appeal has been allowed by said District Court and the record on said appeal has heretofore this day been filed and docketed in this Court, and respectfully moves the Court to grant a temporary restraining order herein pending the hearing and decision of such appeal by this Court, and for grounds of its motion shows:

1. On September 22, 1921, appellant (hereinafter called plaintiff) filed its bill in the United States District Court for the Western District of North Carolina, making as defendants thereto A. D. Watts individually and as Commissioner of Revenue of the State of North Carolina, Baxter Durham, Auditor of the State of North Carolina, Benjamin R. Lacey, Treasurer of the State of North Carolina, James S. Manning, Attorney General of the State of North Carolina, and forty-six Sheriffs of the several counties in North Carolina through which appellant operated and paid taxes, and ninety-seven Tax Collectors of the cities and towns through which appellant operated and paid taxes, and thirteen Tax Collectors of Special or Graded School Districts in which appellant operated and paid taxes. The necessity for having one hundred and sixty defendants was that the Revenue Commissioner certified the assess-

ment complained of to the several counties, cities and school districts so soon after the fixing of the assessment as that plaintiff had not an opportunity to enjoin the certification and therefore was compelled to enjoin the tax collecting officers of the State in each tax district from collecting taxes on the assessment which had been so certified.

2. The bill filed sought to enjoin the State's taxing officers (1) from collecting property taxes upon an excessive ad valorem assessment of $96,306,357.00; (2) from collecting a franchise tax under a void Franchise Tax Law; (3) from collecting a franchise or privilege tax based upon an excessive assessment of $96,306,357.00.

Ad Valorem Assessment. The advalorem assessment, it was averred, was illegal for the following reasons:

(a) The assessment of plaintiff's property at $96,306,357.00 is in excess of the true value in money of said property for tax purposes as the same is defined under the North Carolina law, and the collection of taxes thereon deprives plaintiff of the equal protection of the law contrary to the Constitution of the United States.

(b) The North Carolina tax officials failed and refused to follow the method prescribed by the statutes of North Carolina for the assessment of

railroads, but assessed the property of plaintiff on a basis not authorized or sanctioned by the North Carolina statute, such basis being arbitrary and illegal and the assessment arrived at therefore invalid.

(c) The method of valuation for tax purposes followed by the tax officers of North Carolina imported into the State of North Carolina values which are elsewhere and thus violated the Commerce Clause of the Constitution of the United States.

(d) The County Boards of Review of thirty-two of the counties through which plaintiff operates made horizontal reductions in the assessed value in said counties as a whole of real property ranging from 10 to 50 per cent. The Revenue Commissioner declined to give to plaintiff similar horizontal reductions in plaintiff's right of way, lands and structures thereon, situated in said counties. This was an illegal discrimination and this declination on the part of the Revenue Commissioner violated Section 3 of Article 5 of the Constitution of North Carolina and violated the Fourteenth Amendment to the Constitution of the United States.

(e) That the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment of the Federal Constitution have been violated, in that, while plaintiff's property is

alleged by the State to be assessed at its true value for tax purposes, the property of other taxpayers generally in the State is habitually, customarily and systematically assessed for tax purposes at less than true value.

Franchise Tax. The following are the grounds upon which we base our contention that the franchise tax law is void:

(a) The ad valorem assessment being in excess of true value for tax purposes, the franchise tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

(b) The franchise tax demanded of plaintiff for the year 1921 is $96,306.35, which is one-tenth of one per cent of the aggregate assessed valuation of plaintiff's property of $96,306,357.00; whereas, under the provisions of Section 82(3½) of the Revenue Act of North Carolina of 1921, plaintiff should be required to pay upon only one-half of such value, for the reason that the proportion of the capital stock of plaintiff, a foreign corporation, apportionable to North Carolina is less than one-half of the assessed value for taxation of all the property of plaintiff in North Carolina for the year 1921. Therefore, the demand made by the State Auditor denies plaintiff equal protection of the law, in violation of the Four-

teenth Amendment to the Constitution of the United States.

(c) The so-called franchise tax is not a franchise tax, but is in fact an ad valorem tax. Since it is an ad valorem tax, it is void because not levied equally upon all property holders in the State, and is, therefore, contrary to Section 3 of Article 5 of the Constitution of North Carolina, and by reason of the enforcement thereof, plaintiff is deprived of the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States.

(d) If the so-called franchise tax be held to be a franchise tax and not a property tax, then it is unconstitutional and void, because it is a tax upon the privilege of engaging in interstate commerce and violates the Commerce Clause of the Constitution of the United States.

3. Plaintiff, at the time of filing its bill, made application for an interloctory injunction under Section 266 of the Judicial Code. The District Judge entered an order fixing October 6, 1921, for hearing the application for an interlocutory injunction and directing that not less than five days' notice be given the Governor and the State of North Carolina, and calling to his assistance to hear the application, Edmund Waddill, Jr., United States Circuit Judge, and Henry G. Connor, United States District Judge for the Eastern

District of North Carolina, and giving notice of the hearing to all defendants.

4. October 6, 1921, the Three-Judge Court assembled, defendants filed a motion to dismiss bill, which was denied. The plaintiff, by its counsel, and the defendants, through the Attorney General of North Carolina, on October 6, 1921, entered into a stipulation, which stipulation was approved by the three-judge bench and filed as a part of the record in this cause. The plaintiff in the stipulation agreed to pay and has paid all taxes, other than the franchise tax, as they might come due on an assessed valuation of sixty million dollars (the assessment complained of as being excessive and otherwise void being $96,306,357.00). The defendants agreed not to demand or collect or begin proceedings of any character for the nonpayment of said taxes on any valuation in excess of said sixty million dollars "until the further order of the Court or pending this action." The Court entered an order based upon the stipulation, reciting that the application for preliminary injunction had been continued by agreement of parties in order that the defendants might have time to answer and prepare their defense.

5. November 30, 1921, defendants filed their answer. Thereafter, plaintiff and defendants, within the time stipulated, filed affidavits in support of and against the application for interlocutory injunction.

6. January 24, 1922, the application for interlocutory injunction was heard by the Three-Judge Court, which took the matter under consideration and gave thirty days within which to file briefs.

7. March 18, 1922, the Three-Judge Court filed its per curiam opinion, which, without expression of reasons therefor, held that plaintiff had not made such a case as entitled it to an interlocutory injunction as prayed for and entered on the same day an order refusing and denying the injunction as prayed for. This order concluded as follows:

> "And it is further ordered that the defendants shall not proceed to enforce the collection of taxes involved in this litigation, for the period of thirty days from the date of this order, to the end that complainant may take such action in the premises as it is advised to."

8. March 31, 1922, plaintiff filed its petition for appeal and for an order staying the proceedings pending appeal to the Supreme Court. This petition was continued at the request of the State, as shown by the Court's order, to April 10, 1922.

9. April 10, 1922, the Court granted the appeal, but further ordered that plaintiff's petition for the further stay was continued for a hearing by the Three-Judge Court, and further ordered that the appeal was without prejudice to plaintiff as

to the later hearing of the matter of further stay asked for.

10. April 15, 1922, the Three-Judge Court denied the stay until the appeal could be decided by the Supreme Court, in the following language:

> "The Court, being of the opinion that the application to continue in effect the thirty-day stay granted March 18, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this Court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States, denies the application for continuance of said stay until the appeal is decided by the Supreme Court of the United States."

The Court extended the restraint of the State's officers ordered March 18, 1922, for thirty days, to May 15, 1922, in the following language:

> "And it appearing to the Court that the hearing of this application has been delayed through no fault of plaintiff's, and the Court being of the opinion that the status quo should be continued until the application for restraint pending the appeal can be made to and decided by the Supreme Court of the United States, ORDERS that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order."

Plaintiff further shows the Court that unless the defendants are restrained pending the decision of this Court on the appeal taken under Section 266 of the Judicial Code from the order of the Three-Judge Court denying the interlocutory injunction, the State's officers will immediately collect the taxes in dispute and plaintiff's appeal to this Court from the order denying the restraint will be fruitless and irreparable injury will be done it. If this Honorable Court should hold on the appeal now pending here that plaintiff was entitled to an interlocutory injunction, restraining until the merits the collection of the taxes on the excess of the ad valorem assessment over the assessment paid on by stipulation in the record or under the void franchise tax law, the value of that decision would be lost to plaintiff, because the plaintiff will have paid the taxes to restrain which payment until decision on the merits the appeal is taken; and if at the trial on the merits the assessment is held void, plaintiff will suffer irreparable injury in that it will have to bring more than 150 suits to recover the taxes illegally exacted and paid to the counties, cities and separate school districts in the State of North Carolina, and there is not any adequate remedy provided under the law of North Carolina for the recovery of the franchise tax, which is paid directly to the State's officers. On the contrary, if the State should win ultimately, it has a first lien on all of the property for the collection of said

taxes, with such penalty or interest as the law may allow.

In support of this motion, plaintiff attaches hereto a copy of the record in this case on appeal to this Court for interlocutory injunction, which record by stipulation thereto attached is made the record on this motion.

Wherefore, plaintiff prays that the temporary restraint herein asked be granted.

SOUTHERN RAILWAY COMPANY,

By S. R. PRINCE,

Its Attorney.

SOUTHERN RAILWAY COMPANY,
Plaintiff,

vs.

A. D. WATTS, ET AL.,
Defendants.

It is agreed by the parties to this cause that the record on appeal from the order denying the interlocutory injunction may be considered as the record on hearing of the motion of appellant for stay of the proceedings until the said appeal can be heard and determined.

.....
Attorney for Appellant.

.....
Attorney for Appellee.

SOUTHERN RAILWAY COMPANY,
Plaintiff,

vs.

A. D. WATTS, ET AL.,
Defendants.

The defendants will take notice that, on or before May 15 1922, the plaintiff will perfect its appeal of this suit to the Supreme Court of the United States, by filing the duly certified record thereof with the Clerk of said Court, and will thereafter, on the ~~1st~~ 22 day of May, 1922, about the hour of noon present to the Court in its court room in Washington, D. C., the foregoing motion for the maintenance of the statu quo and temporary restraint of the State's tax officers pending the determination of its said appeal.

This 26th day of April, 1922.

(S) S. R. Prince
Attorney for Appellant.

Receipt is acknowledged of the foregoing notice and defendants waive any further or other notice thereof. This 27th day of April, 1922.

(S) Wm. P. Bynum
Attorney for Appellee.

Office Supreme Court, U. S.
FILED
MAY 15 1922
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

ATLANTIC & YADKIN RAILWAY COMPANY,
Appellant,
vs.
A. D. WATTS, ET AL.,
Appellee.

In Equity
No. [redacted]369

BRIEF IN SUPPORT OF PETITION FOR STAY PENDING APPEAL TO THIS COURT UNDER SECTION 266 OF THE JUDICIAL CODE.

S. R. PRINCE,
Attorney for Appellant.

L. E. JEFFRIES,
MANLY, HENDREN & WOMBLE,
A. B. ANDREWS,
Of Counsel.

PRESS OF THE BYRON S. ADAMS PRINTING COMPANY, WASHINGTON

IN THE

Supreme Court of the United States

ATLANTIC & YADKIN RAILWAY COMPANY,
Appellant,
vs.
A. D. WATTS, ET AL.,
Appellee.

In Equity No. 928.

BRIEF IN SUPPORT OF PETITION FOR STAY PENDING APPEAL TO THIS COURT UNDER SECTION 266 OF THE JUDICIAL CODE.

Statement of Facts.

The petition filed sets forth the basis of this suit and the successive steps taken in this suit up to date. This case in all its stages below was submitted with the case of Southern Railway Company vs. A. D. Watts, et al., and the lower court

entered similar orders in this case at each stage to those entered in the Southern Railway case, in which latter case a similar motion has this day been filed. The motion in this case sets forth the differing facts. There is no difference in principle. There is a difference in degree.

The appellant respectfully asks leave of the Court to consider as its brief in support of this motion the brief filed this day in support of the motion in the Southern Railway Company case, supra.

Respectfully submitted,

S. R. PRINCE,
Attorney for Appellant.

L. E. JEFFRIES,
MANLY, HENDREN & WOMBLE,
A. B. ANDREWS,
Of Counsel.

FILED
MAY 10 1927
WM. R. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 368

THE SOUTHERN RAILWAY COMPANY, *Appellant*,

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina*.

No. 369

ATLANTIC & YADKIN RAILWAY COMPANY, *Appellant*,

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina*.

No. 381

SEABOARD AIR LINE RAILWAY COMPANY, *Appellant*,

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina*.

No. 382

ATLANTIC COAST LINE RAILROAD COMPANY, *Appellant*,

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina*.

No. 383

NORFOLK SOUTHERN RAILROAD COMPANY, *Appellant*,

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina*.

BRIEF FOR APPELLEES IN OPPOSITION TO MOTIONS FOR TEMPORARY RESTRAINING ORDERS PENDING APPEALS.

JAMES S. MANNING,
Attorney General of North Carolina,
FRANK NASH,
Assistant Attorney General,
Counsel for Appellees.

GEORGE H. BROWN,
WILLIAM P. BYNUN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN, *Of Counsel*.

(28,882)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

IN EQUITY.

Nos. 927, 928, 960, 961, 962.

SOUTHERN RAILWAY COMPANY, APPELLANT,

vs.

A. D. WATTS ET AL., APPELLEES.

BRIEF OF APPELLEES IN OPPOSITION TO THE MOTION FOR TEMPORARY RESTRAINING ORDER PENDING APPEAL TO THE SUPREME COURT UNDER SECTION 266 OF THE JUDICIAL CODE OF THE UNITED STATES.

The plaintiff, Southern Railway Company, and the Atlantic & Yadkin Railway Company, in September, 1921, brought their suits in the United States District Court for the Western District of North Carolina, at Greensboro, and the Atlantic Coast Line Railway, the Seaboard Air Line Railway, and the Norfolk-Southern Railway about the same time filed their complaints in the United States District Court for the Eastern District of North Carolina, at Raleigh, against the Revenue Commissioner, the Treasurer, the Attorney General, and

other officials of the State, assailing the taxing laws of North Carolina as unconstitutional and void so far as they relate to the plaintiffs in those suits. In their complaints the plaintiffs asked for an interlocutory injunction under Section 266 of the Judicial Code. At a preliminary hearing, stipulations were entered into between the parties whereby certain portions of the taxes admittedly due should be paid by the plaintiffs, the payment of the remaining amounts due to await the further order of the court pending the application for the interlocutory injunctions.

The defendants fully answered the complaints, and time was allowed by the court to file affidavits, exhibits, proofs, etc., by the respective parties. The five cases were then set down for hearing by the three judges constituting the court, under Section 266 of the Judicial Code, on January 24, 1922, when the cases were heard at length on oral argument and printed briefs. The judges took the cases under consideration until March 18, 1922, when they rendered their decision, unanimously denying the applications for interlocutory injunctions, holding that:

> "The court, after consideration of the bills, exhibits, affidavits and arguments of counsel, is of the opinion that, for the purpose of this motion only, complainants have neither in their pleadings, nor upon the proofs adduced, made such a case as entitled them to have an interlocutory injunction in said causes as prayed for and the motions for such interlocutory injunctions in respect to the *ad valorem* and the franchise and privilege tax should not be granted and said motions and each of them are denied."

The court further held that the contentions sought to be made by the plaintiffs in regard to the imposition and en-

forcement of the income tax were not presented upon the bills and proofs filed in these suits, and it therefore expressed no opinion with respect to the validity of the income tax or the statutes enacted for its enforcement and held that the plaintiffs in respect to such income tax might proceed without prejudice in such manner as they might be advised.

Accordingly, the plaintiffs in all these tax cases have instituted independent suits, which are now pending in the District Court of the United States for the Eastern District of North Carolina, challenging the validity of the income-tax laws of North Carolina, and the validity of those laws are therefore in no way involved in the cases at bar nor in the applications to this court for restraining orders.

The court, however, ordered that the defendants should not proceed to enforce the collection of the taxes involved in the litigation for a period of thirty days from the date of their decision, to the end that the plaintiffs might take such action in the premises as they might be advised.

Appeals were duly taken to this court, and the plaintiffs thereupon applied to the three judges for a continuance of the order forbidding the defendants from proceeding to enforce the collection of the taxes involved until the appeals had been heard and determined by this court. After due consideration, this application was unanimously denied by the three judges constituting the court. But the defendants were directed not to enforce the collection of the taxes involved in the litigation for a period of thirty days from April 15, 1922, in order that the plaintiffs might have time to apply to this court for the restraint desired.

Inasmuch as these applications by the several railroads referred to for restraining orders present the same questions,

the appellees asked to be permitted to file this one brief in opposition to all the motions, and that it be considered as filed in all the cases.

The appellees, officers representing the State, oppose the granting of the restraining orders by this court:

1.

Because, even if this court has the power to grant, on motion, the restraining orders applied for after the judges below declined to grant them, it is respectfully submitted that it should not exercise this power now, but await the hearing of the cases on their merits. By granting the restraining orders this court, on a mere motion, would be doing what the three judges constituting the court below, after careful examination of the merits of the cases, declined to do.

A pertinent discussion of this identical question is found in the case of *Louisville & N. R. Co. v. Railroad Commission*, 208 Fed. Rep., 35, at pages 58 and 59, where the court, passing upon an application for a restraining order like those presented here, through Shelby, circuit judge, says:

> "The application now before the court seeks to enjoin or stay the order of the Commission pending an appeal by the plaintiff to the Supreme Court from the order refusing the interlocutory injunction. The first application was for an injunction pending the suit which stood for trial in the District Court. The second application is for injunctive order pending the appeal. Relief on either application meant the suspension of the rates fixed by the Commission and the reestablishment of the higher rates fixed by the plaintiff. Both applications are urged by the same arguments and the same offer of bond. I can see no reason for granting the second application that would not

have been equally applicable to granting the first. * * * It seems to me utterly useless to have refused the first application if the second is to be granted. If a case is now presented for the exercise of judicial discretion by revoking, in effect, our former order, we should have granted the interlocutory injunction on the first application. We gave reasons for the refusal of the injunction which seem to me equally controlling on the second motion. Conceding that the statutes allow a supersedeas after denial of the injunction in cases arising under Section 266, we have before us practically the same question that we had on the first application—whether or not the Commission's order should be in force pending the litigation. The only difference is that the Commission's order is now fortified by the opinion of this court. Having refused to enjoin it and having put it in force on its merits after full hearing, it seems to me that it would be practically a reversal of our position to suspend it now after our elaborate approval of it."

And, concluding the opinion, the court says:

"But if it be conceded that the statute or the general law gives us a discretionary power to set aside the Commission's rate now in force and to reinstate the rates fixed by the Railroad Company—a question not necessary to decide now—I do not think a case is presented for the exercise of such discretionary power. The application to continue the restraining order should be refused, because we have already decided that the rate fixed by the Commission should not be enjoined."

The same reasoning is applicable to the motions presented here. If this court should grant the restraining orders applied for, it would in effect be overruling the decision of the

three judges denying the interlocutory injunction and passing upon the merits of the question to be presented on appeal, and that on a mere motion.

II.

It is not necessary for this court to grant the restraining orders applied for, since the plaintiffs can and will suffer no irreparable injury if the motions are refused.

This court can find upon these motions that unless they are granted the plaintiffs will suffer irreparable injury only upon the assumption that the State of North Carolina will deliberately be unmindful of and will wrongfully repudiate its legal obligations. This presumption should not be indulged.

Besides, the right of the plaintiffs to recover taxes illegally paid is fully protected by the laws of North Carolina. This appears from the following statutes of that State:

> "Whenever taxes of any kind are or have been, through clerical error or misinterpretation of the law, or otherwise, collected and paid into the State Treasury in excess of the amount legally due the State, the State Auditor shall issue his warrant for the amount so illegally collected to the person entitled thereto, upon certificate of the head of the department through which said taxes were collected or his successor in the performance of the functions of that department, with the approval of the Attorney General, and the Treasurer shall pay the same out of any funds in the treasury not otherwise appropriated. *Provided*, demand is made for the correction of such error or errors within two years from the time of such payment. *Provided further*, that claims which have arisen within the five years next preceding the ratification

of this act shall be presented and made within two years from the ratification of this act."

This act was passed by the General Assembly of North Carolina at a special session the 19th day of December, 1921.

In addition to the foregoing statute, Section 7979 of the Consolidated Statutes of North Carolina provides as follows:

> "Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the Sheriff; but if, at the time of such payment, he shall notify the Sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the Treasurer of the State or of the county, city or town for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, he may sue such county, city, or town for the amount so demanded, including in his action against the county, both State and county tax; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of State taxes for which judgment shall be rendered in such action shall be refunded by the State Treasurer."

In addition to the foregoing statutes, the Attorney General and other State officers, parties defendant to these suits, have guaranteed in behalf of the State and the other taxing

officers to repay to the plaintiffs any taxes the collection of which is by this motion sought to be restrained in case the court should ultimately decide that such taxes were illegally or wrongfully collected.

III.

The only reason the plaintiffs adduce in support of their contention that this court should grant these restraining orders pending the appeal is their assertion that unless this is done, and if the tax-collecting authorities of the State and its subdivisions should repudiate the legal obligations of the State to the plaintiffs and refuse to repay these taxes if the courts finally declare them to have been illegally collected, the plaintiffs will be put to a multiplicity of suits in order to recover them even under the provisions of the State statutes.

As to this contention we say, first, that the occasion will not arise; that if the courts declare these taxes to be illegal they will be repaid to the plaintiffs without contest; that the State authorities have pledged that they will repay amounts paid to the State and will direct and procure repayment of amounts paid to subdivisions if the taxes are ultimately declared illegal. We say it is not to be presumed that the State and its subdivisions will do wrong.

Moreover, this contention of the plaintiffs has no applicability whatsoever to the taxes which are paid directly to the State, the franchise taxes. If the State officials should violate its clear obligation and refuse to repay taxes which have been declared illegal, still as to the franchise taxes which are paid directly to the State Treasurer the plaintiffs could not possibly be put to a multiplicity of suits. One suit

against the Treasurer under the provisions of the statute of 1921 would give full relief and recovery, even if he should refuse voluntarily to repay them. Under no possible aspect of the question, therefore, is there any reason to grant these restraining orders here moved for as to the taxes which are paid directly to the State Treasurer, and certainly as to those taxes the motions should be refused. For the other reasons herein set forth we submit the motions should be refused as to all the taxes.

The reasoning of this court in *State Railroad Tax Cases*, 92 U. S., 575, at page 613, is entirely applicable in consideration of these motions.

> "The Government of the United States has provided, both in the customs and in the internal revenue, a complete system of corrective justice in regard to all taxes imposed by the General Government, which in both branches is founded upon the idea of appeals within the executive department. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid, by suit against the collecting officer. But there is no place in this system for an application to a court of justice until after the money is paid.
>
> "That there might be no misunderstanding of the universality of this principle, it was expressly enacted in 1867, 'that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' Rev. Stat., Sect. 3224. And though this was intended to apply alone to taxes levied by the United States, it shows the sense of Congress of the evils to be feared if courts of justice could, *in any case,* interfere with the process of collecting the taxes on which the Government depends for its

> continued existence. It is a wise policy. It is founded in the simple philosophy derived from the experience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully, other instrumentalities and other modes of procedure are necessary than those which belong to courts of justice. See *Cheatham v. Norwell,* decided at this term; *Nickoll v. United States.* 7 Wall., 122; *Dow v. Chicago,* 11 Wall., 108."

It is therefore respectfully submitted that the motions for restraining orders in these cases should be denied and the defendants allowed to proceed to the collection of the taxes remaining unpaid. If on a hearing upon the merits the decree of the court below should be reversed, the State authorities stand ready to refund any taxes found to be illegally collected, and even if they should not do so voluntarily the plaintiffs are amply protected by the statutes of the State against any injury by reason of the payment of such taxes.

Respectfully submitted,

JAMES S. MANNING,
Attorney General of North Carolina;

FRANK NASH,
Assistant Attorney General,
Solicitors for Defendants.

GEORGE H. BROWN,
WM. P. BYNUM,
LOCKE CRAIG,
THOS. D. WARREN,
SIDNEY S. ALDERMAN, *Counsel.*

FILED
MAY 15 1922
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

SOUTHERN RAILWAY COMPANY,
Appellant,
vs.
A. D. WATTS, ET AL.,
Appellee.

In Equity
No. [redacted]368

BRIEF IN SUPPORT OF PETITION FOR STAY PENDING APPEAL TO THIS COURT UNDER SECTION 266 OF THE JUDICIAL CODE.

S. R. PRINCE,
Attorney for Appellant.

L. E. JEFFRIES,
MANLY, HENDREN & WOMBLE,
C. O. AMONETTE,
Of Counsel.

PRESS OF THE BYRNARTH COMPANY, WASHINGTON

CASES CITED.

Page

Cotting vs. Kansas City Stock-Yards Co., 82 Fed. 850 10

Cotting vs. Kansas City Stock-Yards Co., 183 U. S. 79, 88, 22 Sup. Ct. 30, 46 L. Ed. 82 ..... 5, 7

Grand Trunk Ry. Co. vs. Michigan Railroad Commission, 180 Fed. 1009 6

Henry vs. McDonald, 169 U. S. 139, 161, 3 Sup. Ct. 136, 27 L. Ed. 888 ..... 5, 7, 9, 10

In re Alexander McKenzie, Petitioner, 169 U. S. 186 10

Journal of Commerce and Commercial Bulletin vs. Burleson, 229 U. S. 608 10

L. & N. R. R. Co. vs. Siler, 180 Fed. 170 5

L. & N. vs. Railroad Commission, 209 Fed. 20 6

N. C. & St. L. Ry. Co. vs. McConnell, 82 Fed. 65 10

Ohio River & W. Ry. Co. vs. Dittey, 232 Fed. 107 6

Omaha and Council Bluffs Street Railway Co. vs. I. C. C., 222 U. S. 582 10

Phoenix Ry. Co. of Arizona vs. Geary, 239 Fed. 258 7

Phoenix Ry. Co. of Arizona vs. Geary, 239 U. S. 277 7

U. S. vs. Shipp, 203 U. S. 563 10

IN THE

Supreme Court of the United States

SOUTHERN RAILWAY COMPANY, *Appellant,* *vs.* A. D. WATTS, ET AL., *Appellee.*	In Equity No. 927

BRIEF IN SUPPORT OF PETITION FOR STAY PENDING APPEAL TO THIS COURT UNDER SECTION 266 OF THE JUDICIAL CODE.

Statement of Facts

The petition filed sets forth the basis of this suit and the successive steps taken in this suit up to date. As concisely as can be stated, the situation of petitioner is:

For the year 1919 the ad valorem assessment of appellant in the State of North Carolina was

$46,869,942.00. In 1920 the ad valorem assesswent was increased to $96,605,694.00. Appellant paid its 1920 taxes thereon under written protest. Due to the reduced tax rate and there being no State tax, the actual amount of taxes paid in 1920 on the higher assessment was less than the tax paid in 1919 on the reduced assessment. In 1921 appellant's assessment was $96,306,357.00, being the same as 1920, except for minor changes in local property lying off the right of way. A hearing was had before the Commissioner of Revenue and testimony introduced to show that the assessment was in excess of the true "actual value," and it was earnestly contended that appellant was entitled to the same horizontal reductions on its right of way land in the several counties as had been given all other real property in said counties. The assessment was not reduced.

In 1919 the General Assembly of North Carolina passed a law (Laws of North Carolina 1919, page 115) providing for a revaluation of all the property in the State. At the Extra Session in 1920 (Public Laws, Extra Session, 1920, Chapter 1) the Legislature adopted the revaluation. In that law (Section 7) it was provided that there should be no ad valorem tax for the use of the State, but in lieu of that there should be levied a franchise tax. Under this law, the franchise tax on this railway company was increased from $10.00 per mile to one-tenth of one per cent on the ad valorem assessment. Under this, appel-

lant's franchise tax was increased from $10,930.00 in 1919 to $96,306.00 in 1921.

The next step was the enactment of Section 28(a) of the Machinery Act of 1921 in which County Boards were given the right to make a horizontal reduction in assessments in their respective counties. The County Boards did not have the right to reduce the railroad's assessments, because they did not make the assessments and had no jurisdiction of them. Thirty-two counties through which appellant operates made horizontal reductions in the assessment of real property ranging from 10 to 50 per cent. The Commissioner of Revenue declined to make any reduction in appellant's property. In all except two counties through which appellant operates there was a heavy increase in the rate of taxation ranging from 12¼ to 84 cents per hundred dollars. If the assessment remains, appellant will pay in actual taxes for the year 1921 the sum of $1,243,-715.00, an increase of $368,622.00 over 1920. Under an agreement of counsel, approved by the Court, appellant has paid its taxes on a sixty million dollar valuation and the amount paid to counties, cities, towns and school districts is $61,000.00 in excess of the amount paid in 1920 on the ninety-six million dollar valuation. This is due to the increase in the rate of taxation.

The State in its answer avers that the assessment of ninety-six million dollars for 1921 is the true actual value of appellant's property. Appel-

lant shows that it is in excess of the true actual value. Under the capitalization of earnings plan, it was excessive to the amount of twenty-five million dollars. Under the market value of stock and bonds plan, it was excessive to the extent of fifty million dollars. Under the replacement value, it was excessive to the extent of thirty-five million dollars.

Real property generally in the State was assessed for the year 1921 at 67 per cent of its true value, as evidenced by a complete list of all deeds recorded in every county in the State January 1, 1921, to July 1, 1921, where the consideration was in excess of $1,000.00. This list contained in excess of 6,400 deeds and showed the deed value as compared with the assessed value. The total of the recorded deed value was $30,598,475.24 and the total assessed value of the same property was $20,373,684.07, or approximately 67 per cent.

Brief.

Petitioner is granted by Section 266 of the Judicial Code an appeal to this Court from the denial of a restraining order by the District Court and the two judges called to his assistance. If the appeal is to be of any value to the petitioner, the status quo should remain until that appeal can be heard and determined. Appellant thought and still thinks that the Three Judge Court had the power and that it was its duty to maintain

the status until the appeal could be heard. That view is based upon the following decisions:

In the case of L. & N. R. R. Co. vs. Siler, 186 Fed. 176, the Three Judge Court continued the status quo pending the appeal. The Court said, beginning on page 203:

> "It follows that the motion for an interlocutory injunction in both its branches must be denied. However, the questions involved are of such importance that we assume that a review of our conclusions will be desired by complainant, pursuant to the special provision for such review found in section 17 of the act of June 18, 1910. If the Supreme Court, on such review, shall decide that complainant was entitled to this injunction, then it is apparent that our present refusal to grant the injunction would result in irremediable injury, on account of failure to preserve the status quo. Applying the reasons of the rule stated in Hovey vs. McDonald, 109 U. S. 150,161,3 Sup.Ct.136, 27 L.Ed.388, and further stated in Cotting vs. Kansas City Stockyards Co., supra, 183 U. S. 79, 80, 22 Sup. Ct. 30, 46 L. Ed. 82, we have concluded that the restraining order of September 7, 1910, should be continued until an opportunity has been given for the complainant to secure a review, and subject to conditions which will be prescribed in the order to be entered."

Attention is directed especially to this language of that court: "If the Supreme Court, on such review, shall decide that complainant was entitled

to this injunction, then it is apparent that our present refusal to grant the injunction would result in irremediable injury, on account of failure to preserve the status quo." That language is equally applicable to this case. Should the Supreme Court of the United States decide that this complainant is entitled to the injunction applied for, then the refusal of this Court to preserve the status quo would result in irremediable injury to complainant.

In Ohio River & W. Ry. Co. vs. Ditty, 203 Fed. 537, the Three Judge Court continued in effect the restraining orders until the plaintiffs should have an opportunity to secure a review. The Court said, beginning on page 549, as follows:

> "It follows that the motion for an interlocutory injunction in each case must be denied. However, the questions involved are of such importance that we assume that a review of our conclusions will be desired by the plaintiffs, pursuant to the special provision found in section 266, Judicial Code (Act of March 3, 1911, c. 231, 36 Stat. 1162 (U. S. Comp. St. Supp. 1911, p. 236).
>
> "We have accordingly concluded that the restraining orders heretofore granted shall be continued until an opportunity has been given for the plaintiffs to secure a review, and subject to conditions which will be prescribed in the order to be entered."

In Grand Trunk Ry. Co. vs. Michigan Railroad Commission, 198 Fed. 1009, the Three Judge

Court withheld the formal entry of orders in accordance with its opinion in order to give complainants an opportunity to present application for a continuance of the restraining order pending the appeal. The Court said on page 1023 as follows:

> "It follows from what has been said that the application for interlocutory injunction should be denied, and the existing restraining order vacated. As the questions presented are important and review may be desired, the formal entry of the orders in accordance with this opinion will be withheld until September 5th, next, to give complainants opportunity to present such applications as they may desire for a continuance of the restraining order pending appeal (under the rule stated in Hovey vs. McDonald, 109 U. S. 150, 161, 3 Sup. Ct. 136, 27 L. Ed. 888, and Cotting vs. Kansas City Stockyards Co., 183 U. S. 79, 80, 22 Sup. Ct. 30, 46 L. Ed. 92) in case such appeal is to be taken."

In Phoenix Ry. Co. of Arizona vs. Geary, 209 Fed. 694, the Three Judge Court, while denying the motion for an interlocutory injunction, continued the restraining order in force pending the appeal. This action of the Three Judge Court was tacitly approved by the Supreme Court of the United States in Phoenix Ry. Co. vs. Geary, 239 U. S. 277, in which case the Court said on page 281 as follows:

"The Court held (209 Fed. Rep. 694) that complainant's showing as to the alleged unreasonableness of the Commission's order was not sufficiently strong to warrant an injunction to restrain its enforcement *pendente lite,* but the temporary restraining order was continued in force pending the present appeal, taken direct to this court under the cited section of the code."

We have found no case to the contrary. The diligence of appellee's counsel found no case to the contrary, and their only reliance was the specially concurring opinion of Judge Shelby in the case of L. & N. vs. Railroad Commission, 208 Fed. 29, at page 58. It will be noted that this was a specially concurring opinion, the reasoning of which was not agreed to by the Court, and that the Court in that case ordered:

"It is therefore ordered that the plaintiff's application for the allowance of the appeal and for supersedeas or a restraining order against the enforcement of the order of the Railroad Commission of Alabama, pending the appeal, be denied, the court not passing upon the merits of the application, and without prejudice to the right of the plaintiff to renew its application for an appeal and for a restraining order, pending the appeal, in the Supreme Court, or as it may be advised."

The Three Judge Court did not in this case pass upon the merits of the motion for a stay, but expressed the opinion that the Supreme Court

was the proper court to grant the stay (Order of April 15, 1922, p. 9 of Motion). It stayed the State's hand for two thirty-day periods upon the idea that not to do so would be an injustice to appellant. For the same reason that the State's hand was stayed sixty days, it should be stayed until this court can pass upon the appeal.

This Court has the undoubted power and authority to continue the stay in effect. This is the view of this Court on the general question of the powers of an equity court, which powers apply with equal force to an appeal under Section 266 of the Judicial Code. The leading case is that of Hovey vs. McDonald, 109 U. S. 150. In that case the Supreme Court of the United States discussed the power of the lower court to maintain the status quo on page 161 of the opinion as follows:

> "It was decided that neither a decree for an injunction nor a decree dissolving an injunction was suspended in its effect by the writ of error, though all the requisities for a supersedeas were complied with. It was not decided that the court below had no power, if the purposes of justice required it, to order a continuance of the status quo until a decision should be made by the appellate court, or until that court should order the contrary. This power undoubtedly exists, and should always be exercised when any irremediable injury may result from the effect of the decree as rendered; but it is a discretionary power, and its exercise or non-exercise is not an appealable matter. In recognition of this power,

and for the purpose of facilitating its proper exercise in certain cases, on appeals from the circuit courts, this court by an additional rule of practice in equity, adopted in October term, 1878, declared that:

"'When an appeal from a final decree, in an equity suit, granting or dissolving an injunction, is allowed by a justice or judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending or modifying the injunction during the pendency of the appeal upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party.' Rule 93."

The Court also said on page 162 as follows:

"Applying these principles to the present case, it is clear that the force of the decree was not affected by the appeal, although it was in the power of the special term to have continued the injunction and to have retained the fund in its control in the hands of the Receiver had it seen fit to do so. Judging only from what appears in the record, we cannot refrain from saying that, in this case, the latter course would have been eminently proper. It would have protected all parties and produced injury to none. But if the court failed to do what it might properly have done, such failure ought not to be visited upon the receiver, who was the mere instrument and hand of the court, and subject to its order. It was his duty to obey the decree as made."

Unless the stay applied for is granted the tax collecting authorities of North Carolina will proceed at once to collect the tax, the validity of which is involved in this suit. Should such tax be collected and disbursed prior to the determination of this case, a victory on the part of complainant would be fruitless.

The principles enunciated in Hovey vs. McDonald were applied in Cotting vs. Kansas City Stockyards Company, 82 Fed. 850. In that case the Court said on page 857 as follows:

> "The great importance of the questions involved in these cases will doubtless occasion an appeal to the Supreme Court of the United States, where they will be finally settled and determined. If, on such appeal, the Kansas statute complained of should be adjudged invalid for any reason, and in the meantime the statutory schedule of rates should be enforced, the stockyards company would sustain a great and irreparable loss. Under such circumstances, as was said, in substance, by the supreme court in Hovey vs. McDonald, 109 U. S. 150, 161, 3 Sup. Ct. 136, it is the right and duty of the trial court to maintain, if possible, the status quo pending an appeal, if the questions at issue are involved in doubt; and equity rule 93 was enacted in recognition of that right. The court is of opinion that the cases at bar are of such moment, and the questions at issue so balanced with doubt, as to justify and require an exercise of the power in question. Therefore, although the

bills will be dismissed, yet an order will at the same time be entered restoring and continuing in force the injunction which was heretofore granted, for the term of 10 days, and if, in the meantime, an appeal shall be taken, such injunction will be continued in force until the appeal is heard and determined in the supreme court of the United States; provided that, in addition to the ordinary appeal bond, the Kansas City Stock Yards Company shall make and file in this court its bond in the penal sum of $200,000, payable to the clerk of this court and his successors in office, for the benefit of whom it may concern, conditioned that, in the event the decree dismissing the bills is affirmed, it will, on demand, pay to the party or parties entitled thereto all overcharges for yarding and feeding live stock at its stock yards in Kansas City, Kan., and Kansas City, Mo., which it may have exacted in violation of sections 4 and 5 of the Kansas statute relative to stock yards, approved March 3, 1897, since an injunction was first awarded herein, to-wit, on April , 1897, and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation of said statute during the pendency of the appeal; said obligation to become void if the statute in question shall be pronounced invalid by the supreme court."

In the case of Omaha and Council Bluffs Street Railway Co. vs. I. C. C., 222 U. S., 582, this Court held that it was proper for an order to be entered by it to maintain the status quo pending an appeal

from the judgment of the Commerce Court sustaining an order of the Interstate Commerce Commission.

This Court, in the case of Journal of Commerce and Commercial Bulletin vs. Burleson, 229 U. S., 60, granted a restraining order pending a decision. See to the same effect In re Alexander McKenzie, Petitioner, 180 U. S., 536, at page 549, and U. S. vs. Shipp, 203 U. S., 563, at page 573.

Appellant has not delayed the trial of this case in any way for any length of time. It has offered to try the case on its merits at the June Term of the Federal Court. We still believe that it was the duty of the lower court to pass upon this question of maintaining the status quo, because that Court knew all the facts and had examined into the question in order to pass upon the motion for an interlocutory injunction, and it seems to us proper that that Court should pass upon the question of granting or not granting the stay. We have not the slightest doubt that if the lower court had been of the opinion that it was the proper forum to pass upon the question of maintaining the status that the stay would have been granted.

As to irreparable damage which will be suffered should the stay not be granted—appellant will be compelled to bring 180 suits to recover the amount of the taxes paid if finally held to be illegally paid, and that alone is irreparable damage. The irreparable injury should be determined not so much

upon the question of whether appellee may not recover the tax, but, we submit, is based upon the fact that the statute, 266 of the Judicial Code of the United States, allows appellant an appeal from the failure to grant an interlocutory injunction, and unless the status quo is maintained, this appellant is virtually denied the right given it, because an appeal will be valueless unless the status quo is maintained. This Court, in the exercise of its equity powers, is not held to an exercise of them, only in the case of irreparable damage. In other words, in this case the appellant is not required to show the irreparable injury in the strict sense of the word, in so far as the ultimate outcome is concerned. As stated, we have a right to the appeal, and if not to maintain the status will irreparably deprive us of it unless the relief sought is granted, then irreparable damage follows.

In the case of N. C. & St. L. Ry. Co. vs. M'Connell, 82 Fed., 65, the Railway sought an injunction against ticket scalpers, that is, persons who bought up unused portions of return trip tickets and sold them. The Court held that plaintiff was entitled to an injunction. On page 68 the Court discussed the relief or redress of the carrier in case the injunction was not granted. It held that complainants were without adequate redress at law, due to the large number of suits for small amounts which would have to be instituted if the carrier was confined to his remedy at law. The Court said on this particular point:

"If 500 separate suits at law for breach of the contract in each ticket is the only mode of redress to the carrier, it requires no comment to show that here is a striking failure of justice. The injury is obviously irreparable."

In addition to that, there is no law permitting suit against the State for the recovery of the franchise tax of ninety-six thousand dollars, which is payable direct to the State, and if that tax be held illegal, there is no method prescribed to recover the sum. The State of North Carolina has not consented to be sued therefor.

Appellant is embarrassed in the briefing of this motion because it is refraining from discussing the merits of the controversy now pending on the appeal. The assessment so made and complained of will remain for three years, and the amount involved for this appellant is in excess of one million dollars.

The Court's attention is directed to the stipulation of record between counsel for the parties, that notwithstanding the stay granted by the lower court expires May 15th, the status quo is to remain until this Court has passed upon the motion here presented.

Respectfully submitted,

S. R. PRINCE,
Attorney for Appellant.

L. E. JEFFRIES,
MANLY, HENDREN & WOMBLE,
C. O. AMONETTE,
Of Counsel.

FILED
OCT 27 1922
WM. R. STANSBU
CLER

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 368.

THE SOUTHERN RAILWAY COMPANY, *Appellant,*

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina.*

No. 369.

ATLANTIC & YADKIN RAILWAY COMPANY, *Appellant,*

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina.*

No. 381.

SEABOARD AIR LINE RAILWAY COMPANY, *Appellant,*

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina.*

No. 382.

ATLANTIC COAST LINE RAILROAD COMPANY, *Appellant,*

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina.*

No. 383.

NORFOLK SOUTHERN RAILROAD COMPANY, *Appellant,*

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina.*

BRIEF ON ARGUMENT FOR DEFENDANT IN ERROR

GEORGE H. BROWN,
Counsel for Defendant in Error.

(28,882, &c.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 368.

THE SOUTHERN RAILWAY COMPANY, *Appellant,*

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina.*

No. 369.

ATLANTIC & YADKIN RAILWAY COMPANY, *Appellant,*

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina.*

No. 381.

SEABOARD AIR LINE RAILWAY COMPANY, *Appellant,*

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina.*

No. 382.

ATLANTIC COAST LINE RAILROAD COMPANY, *Appellant,*

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina.*

No. 383.

NORFOLK SOUTHERN RAILROAD COMPANY, *Appellant,*

vs.

A. D. WATTS, *as Commissioner of Revenue of North Carolina.*

BRIEF ON ARGUMENT FOR DEFENDANT IN ERROR

The North Carolina Railroad Tax Cases.

Three kinds of taxes are imposed on railroad companies doing business in North Carolina by the Legislature, the validity of which is contested; a franchise tax: an *ad valorem* tax on property and an income tax.

The two first-named taxes are before this court. The income tax has been eliminated and is the subject of other suits. The contentions of plaintiffs, appellants, are succinctly stated in the judgment of the court below as follows:

> 1. That the property of complainants was not assessed in the same manner and by the same method as the property of the individual citizens of the State and that the manner and methods by which complainants' property is appraised and assessed for taxation operates as an unjust and unlawful discrimination against complainants, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and that, thereby, complainants are deprived of their property without due process of law.
>
> 2. That the appraisal and assessment for taxation of the property of complainants are not made in accordance with the provisions of the Constitution and statutes of the State of North Carolina and that said appraisal and assessment of taxes thereon are invalid.
>
> 3. That the appraisal of the value of complainants' property is in excess of its true value, for the purpose of taxation, as provided by the Constitution of North Carolina and is, therefore, invalid.
>
> 4. That the uniformity clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States, in the appraisal and assessment of complainants' property, are violated in that complainants' property, alleged by the State to be assessed at its true value for taxation, the property of other tax payers in the State is appraised and assessed for taxation at less than its true value.
>
> That the franchise or privilege tax imposed upon complainants is invalid for that:

1. The *ad valorem* assessment is in excess of its true value for taxation and that the franchise or privilege tax, based thereon, in accordance with the statutes of the State, violates the Constitution of the United States and the State of North Carolina.

2. The franchise or privilege tax is, in truth and fact, an *ad valorem* tax and invalid, because not imposed upon the property of other citizens of the State.

3. That the statute of North Carolina under and pursuant to which the franchise or privilege tax is imposed and sought to be enforced imposes a tax upon the privilege of doing business by complainants, both interstate and intrastate, and is, therefore, a burden upon interstate commerce and thereby violates the commerce clause of the Constitution of the United States.

4. That, if the franchise, or privilege tax, imposed upon complainants be valid, the method of ascertaining the value of complainants' property as a basis for fixing the amount of said franchise or privilege tax includes property of complainants used, as well in interstate as intrastate commerce, and violates the commerce clause of the Constitution of the United States.

Franchise Tax.

I will consider franchise tax first. It is claimed this is an *ad valorem* tax on property pure and simple and as it is not levied on property of other corporations and individuals it constitutes an unlawful discrimination in violation of both the Federal and State constitutions.

This franchise tax is one-tenth of one per cent of the *ad valorem* value assessed throughout the State upon the prop-

erty of the railroads used in their operations in the State as common carriers and payable directly at a fixed date to the State Treasurer.

It is true that if this court should hold that the *ad valorem* tax on property is excessive, discriminatory, or confiscatory and the assessments should have to be reduced, then of course the amount of the franchise tax would necessarily be decreased, but that would not totally destroy it. It is the principle upon which it is based upon which its validity depends.

If this franchise tax is in reality an *ad valorem* tax on property levied solely on railroads for support of State government, then it is a discrimination against the plaintiffs and is an infraction of the State Constitution as well as in conflict with the statute enacted at same session of Legislature which declares that no *ad valorem* tax shall be levied on property for the support of the State government and that the only *ad valorem* tax that may be levied on property shall be levied by the counties, cities, and other divisions of the State for their own support exclusively.

We most confidently contend that this franchise tax is not an *ad valorem* tax on property under the guise of a privilege or franchise tax, but is in fact and truth a franchise tax.

That the Legislature so understood and intended it to be is perfectly manifest. It has been levying franchise taxes of some kind or other for many years. It has levied no other franchise tax than this at its session of 1921. The Legislature expressly declared this to be a franchise tax to be devoted to the expenses of the State government and expressly declared that no *ad valorem* tax whatever should be levied on property for such State expenses.

This is about as plain a legislative declaration of the character of this tax denominating it a privilege tax and not an *ad valorem* tax on property as it was possible to make. If the intention of the Legislature is worth anything then it is beyond dispute what that intention was. I admit that the Legislature cannot levy what is manifestly an *ad valorem* tax on property and by calling it a franchise tax make it so. But this court will respect the manifest purpose of the Legislature and unless it is perfectly plain and clear that the tax in dispute is nothing else but an *ad valorem* tax levied on property for support of the State government, this court will respect the act of the Legislature and not declare it void.

We submit that this tax is not in any sense an *ad valorem* tax and possesses none of the usual attributes and ear-marks of that kind of tax.

This tax is not a lien upon property as an *ad valorem* tax on property is. It is not collected by the taxing officers of the State who collect the *ad valorem* taxes. It is paid directly to State Treasurer by the railroad company. That officer issues his receipt certifying its payment. It could not be collected by execution, as a tax list in North Carolina is in nature of an execution. In case of refusal to pay it would require legal proceedings in the courts to collect it.

There have been for many years franchise taxes, which are in the nature of a license to do business, exacted in all the States of the Union. There have been different methods of estimating what is a fair and proper license tax for exercising the corporation franchise.

The method adopted by our Legislature seems to me to be a most certain and accurate method. It charges the rail-

road company a sum of money for doing business within the State equal to one-tenth of one per cent of the assessed value of its property used in its operations within the State and reads as follows:

> "The basis upon which such calculation shall be made by State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for *ad valorem* taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one per cent of the value so ascertained by the State Tax Commission and such tax shall be due and payable on or before October fifteenth, each year."

This is plainly not an *ad valorem* tax on property in any reasonable and fair construction. It is simply the measurement of the value of the franchise, the privilege to do business within the State, to exercise its franchise within the State and is based upon the assessed value of the property used in the State in the exercise and enjoyment of that franchise.

It appears to me that this method of finding out what the privilege of doing business within the State is worth, is much fairer, more stable, certain, and accurate than to measure it by the capital stock, gross receipts apportioned to the State or any other method I have read of.

It is well settled by the decisions of this court cited in defendant's brief that a State may exact of a non-resident railroad or other public service corporation, a tax for the

privilege of doing business within the State. The State has no right to require of an interstate railroad company the payment of this tax in advance as a prerequisite to entering or doing business within the State. That would be an obstruction to interstate commerce. This court will bear in mind carefully that there is no such condition whatever contained in our statutes.

The tax is not required to be paid as a prerequisite. It can only be collected by ordinary legal process by the State Treasurer.

There are different methods of measuring the value of the privilege of doing business within the State upon part of foreign corporations.

It seems to be well settled that this is a matter within the sound discretion of the Legislature, within some limitations. The tax must not be in its nature obstructive of or a hindrance to interstate commerce.

It must be reasonable and not confiscatory and must be imposed upon all corporations of a like character and business.

The granting of this privilege is a matter entirely within the power of the State, whether the corporation be of domestic or foreign origin.

It may therefore be conferred upon such terms as the State may seem conducive to its own interest or privilege. It may require the annual payment into its treasury of a specific sum of money. It may gauge the amount exacted for the license by the value of the business permitted to be done within its borders as disclosed by its gains or receipts of the present or past years.

Referring to this subject, Mr. Justice Field said, in Grand Trunk Railroad case, 142 U. S., 228:

> "The character of the tax, or its validity is not determined by the mode adopted in fixing its amount for any specific period or the times of its payment. The whole field of inquiry into the extent of revenue from sources at the command of the corporation is open to the consideration of the State in determining what may be justly exacted for the privilege."

The same subject is discussed and same conclusions announced by Justice Strong in the Gross Receipts Tax cases, 82 U. S., 293.

Text writers, as well as many decided cases, hold that a privilege tax is not a property tax. Whether the tax is laid upon property as a direct tax upon property or imposed upon a corporation for the privilege of conducting business in the State is to be determined from the operation and practical effect of the State statute and not from its form.

This is the view of Mr. Elliott and many other authorities cited in his work on railroads, section 761.

In Telegraph Company *vs.* Adams, 155 U. S., 696, it is clearly held that a tax may be imposed on a foreign corporation by a State on its property within the State and may take the form and character of a tax for the privilege of exercising its franchise within the State provided the payment of the tax be not made a condition precedent to the right to carry on the business but its enforcement left to ordinary means for collection of taxes.

In Mining Company *vs.* New York, 143 U. S., 305, the right to tax a foreign corporation for exercising its franchise and to measure the value of that privilege in any reasonable manner is recognized as settled.

In Society for Savings *vs.* Coite, 75 U. S., it was held:

"A statute of a State requiring savings societies, authorized to receive deposits but without authority to issue bills, and having no capital stock, to pay annually into the State Treasury a sum equal to three-fourths of one per cent on the total amount of their deposits on a given day, imposes a franchise tax, not a tax on property," and as such is valid.

At page 608, the court says:

> "Different modes of taxation are adopted in different States, and even in the same States at different periods of their history. Fixed sums are in some instances required to be annually paid into the treasury of the State, and in others a prescribed percentage is levied on the stock, assets, *or property owned or held by the corporation,* while in others the sum required to be paid is left indefinite, to be ascertained in some mode by the amount of business which the corporation shall transact within a defined period."

The most recent case is Railway *vs.* Arkansas, 235 U. S., p. 350, where it is held that

> "Property in a State belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, and may take the form of a tax for privilege of exercising its franchise within the State, if measured on value of property wholly within the State, and provided payment of the tax be not made a condition precedent to carrying on business including interstate business, but the enforcement of the tax left to ordinary means for collection of taxes. Citing Postal Tel. Co. *vs.* Adams, 155 U. S., 688."

I think this case is conclusive that whatever this tax in dispute may be called and on whatever it may be levied it is

exacted as a compensation to the State for the privilege of doing business within its boundaries and is not an *ad valorem* tax upon property to support the State government. It is, pure and simple, a privilege tax for doing business within the State and may be levied in any way the State thinks best provided it does not interfere with interstate commerce. It is not claimed that it is spoliative or confiscatory and its reasonableness is a matter for the State.

Ohio Tax cases, 232 U. S., 577.

Failure to Tax Stocks in North Carolina Corporations.

It is contended by Norfolk & Southern Railroad in its brief, that the Legislature has refused to allow an *ad valorem* tax to be levied on stocks in North Carolina corporations as required by the State Constitution and that the State has permitted counties, cities and towns to levy an *ad valorem* tax on property of the railroads and that this constitutes an illegal discrimination.

The Constitution reads as follows, article 5, section 3:

> "Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money * * * The General Assembly may also tax trades, professions, franchises and incomes."

The same contention might be made by every farmer or other taxpayer who owned a foot of land in the State.

The fact that some property has unlawfully escaped taxation is no reason that other property should escape taxation. Because my property may be wrongfully omitted from the

tax-lists is no reason why somebody else's property should be omittted. The remedy is to cause the property escaping taxation to be placed on tax lists and to accomplish this our State laws furnish ample remedy. But there is really no ground for this contention in fact.

An examination of our tax laws will disclose that "Investments in stocks, bonds and the like are taxed and fully taxed in accordance with the State Constitution."

Prior to 1887 domestic corporations in North Carolina were required to list their real and personal property and pay taxes thereon upon valuations fixed by local assessors at the situs of the corporation—that is, in the county where located. The corporation itself was not required to list its capital stock for taxation. The shareholder was required to list his shares of stock at the place of his residence and pay the taxes on it as there assessed.

Under this method it was found that all the stock owned by non-residents escaped taxation as well as a large part of that owned by residents of the State, while all that was listed for taxation was greatly undervalued, as its value was fixed by the owner.

In the year 1887 the law was changed and the present method of taxation of investments in stocks adopted, under which system no investment in stocks in North Carolina corporations do or can escape taxation. The same law substantially has been on statute books for a third of a century and has never been materially changed. It has been re-enacted by every legislature. It is set out in the Machinery Act of 1921. Section 42 refers to bank taxation and section 43 to taxation of all other domestic corporations. See acts of General Assembly 1921. The officers of these corporations are

required to file with State Tax Commission a report showing total capital stock, number of shares issued, par value of each share, dividends declared and highest prices of stock.

The tax officers thereupon fix the tax value of each share and the corporation is required to pay the tax assessed against this stock for the owner and may charge the tax so paid to his account if they see fit to do so.

I submit that this law meets the requirements of the Constitution and is a tax upon "investments in the stock of the corporation."

There is nothing in our Constitution requiring the Legislature to tax both the capital stock and the certificates of stock.

When the capital stock is taxed, then the "investment" in the corporate stock is taxed and it matters not whether that tax is paid by the corporation for the shareholder or by the shareholder individually. It is manifest that the State Constitution does not require the Legislature to pass laws taxing both the capital stock and also the shares into which it is divided. The result is the same whichever is taxed. Taxing the investment in the capital stock is the most efficient and productive method of collecting the tax.

Some courts draw a distinction between the capital stock and the shares into which it is divided. But that is immaterial for purposes of taxation where both are not required to be taxed. The Legislature is the sole and exclusive judge of what constitutes double taxation when it comes to declaring the tax policy of the State. Whether the Legislature can tax both is immaterial here. It has never done so, but has followed the example of all other States and has taxed the investment in the capital stock and made the corporation pay

it for the shareholder. The result is far more productive of revenue than the former method. In any view we fail to see that this presents any Federal question or anything this court can take hold of.

The Ad Valorem Tax on Property.

One other ground of complaint upon part of plaintiffs relates to the *ad valorem* tax assessed against their real and tangible property situated in the different cities, towns, counties and governmental subdivisions of the State.

They paid all taxes assessed against them in 1919 and 1920 and only the *ad valorem* property taxes for 1921 are involved in these suits in addition to franchise tax already discussed. As before stated, there is no *ad valorem* tax assessed against plaintiffs' property for State purposes.

All the facts are fully stated in defendant's brief and the subject fully discussed with full citation of authority and reference to our statutes and full explanation of our tax laws. I will confine what I have to say to one or two propositions which I think are completely decisive of these cases.

Under our laws all real and personal property of all description belonging to individuals and corporations, other than railroads, are valued by local assessors. This includes the property of railroads not used by them in their business as common carriers. The property of railroad corporations used by them in their business as common carriers is valued for taxation by a central State authority as a whole, and then the total assessment is allocated to the counties through which the road runs on a mileage basis. A similar allocation is made on a mileage basis to cities, towns, and any other taxing districts through which the roads run.

These allocated proportions of the total unit assessment are the basis for local property taxation.

In 1919 a revaluation of all property in the State was ordered, including railroad property. This revaluation was to be subject to the approval of the Legislature. This was ordered because it was a well-understood fact that all property, railroads and all corporate and individual property, had been for many years valued at much less than its true value in money.

This revaluation was had and was to be used as a basis for assessing *ad valorem* taxes thereafter.

The revaluation of plaintiffs' property was made by State Tax Commission and reported to the Legislature, which adopted, ratified, and approved such revaluations. These valuations thus became the valuation made by the Legislature itself. All real estate was increased in value an average of 300 per cent, personal property 194 per cent, railroad property used in business of common carriers 99 per cent. Thus it is seen that railroad property was increased in value very much less than any other property.

After this was all approved at special session of legislature in August, 1920, there was a very great and extraordinary slump in values of farm products and farm lands as well as in cities and towns. In consequence the Legislature in January, 1921, provided for a review of land values the valuation of which had been fixed for four years and provided that the local authorities might, subject to approval of the Central Tax Commission, reduce these valuations in their sound discretion. The boards in 67 counties reduced real property valuations various percentages and in 33 counties refused to make any reductions.

No reduction was authorized in the assessment of personal property, although it had been enormously increased, because that is reassessed every year instead of every four years. This legislation did not apply to railroads because they were valued by the State Tax Commission upon a unit basis and there was really no evidence that they had decreased in value. Nevertheless the State Tax Commission and its successor, the Commissioner of Revenue, were given power to review upon application the railroad valuations.

These several plaintiffs applied to the Commissioner for a reduction of their assessments. He considered each individual case on its merits and refused all except Norfolk and Southern Railroad and reduced that five million dollars. This Commissioner was a different individual from those composing the Tax Commission who made the original valuations.

All the facts and contentions respecting this part of the case are fully set out in our brief.

The argument that the Legislature in 1921 unlawfully discriminated against railroads when it authorized local authorities in each county to reduce in their discretion the valuations which had been fixed for four years in lands, to be approved by State Tax Commission, is easily answered.

The local authorities had nothing to do with valuing railroads. They were valued by the State Tax Commission and its successor, the Commissioner of Revenue. The railroads were given the right to apply, and all of them did apply, to the Commissioner and had a full rehearing. Upon the evidence offered he refused to reduce the valuations except Norfolk and Southern and did reduce its value five millions.

Thus it appears that the valuations now complained of were

fixed by the Tax Commission, then approved and adopted by the Legislature, and affirmed on a rehearing by the Revenue Commissioner, who had succeeded to the powers and duties of the Tax Commission. Three different authorities passed on the valuations and reached same conclusions, except as to Norfolk and Southern, the valuation of which was reduced by the Revenue Commissioner. This road paid taxes in 1920 without complaint on the reduced value, which is only four million in round numbers in excess of its own valuation upon which it paid tax pending this appeal. That is to say, it admits a valuation of 18 millions and is assessed at 22 millions in round numbers.

It is contended that the State Tax Commission failed to follow the State statute in the method adopted in fixing the value of these railroads. I don't think this point is a very serious one.

The statute is directory and directs the roads shall be valued as a unit. It presents certain methods of ascertaining their value. It is not exclusive or mandatory. It is merely directory except that it requires the roads be valued as a unit.

The State Constitution requires that all property, including railroads, shall be valued at its true value in money. That is the paramount law and the Tax Commissioners had the right not only to pursue the directions of the statute but to weigh and consider every reasonable element that would throw light upon the true value of the property. If your honors will read the affidavit of the Tax Commissioners in the record you will find a very clear and concise statement how they went about to assess the value of all this railroad property. They considered every element of value pointed out by the statute.

They called on the roads for their estimate of the actual cost of reproduction and estimated by their engineers, but could not get it. They considered the value placed on them by interstate commerce experts as a basis for fixing freight rates. They considered the stock and bond method—that is, they took the market value of their indebtedness and of the stocks of the roads as indicating the value the financial world placed on them. This of course changes constantly but it is some evidence. The Commission then capitalized the roads upon a 6 per cent basis. Upon that basis the roads are worth much more than their present assessed value. The Commission did not fix the value by any one of these methods but considered and weighed them all and reached their conclusions as follows:

Southern, former value.....	$46,869,942.00..	Present,	$96,605,694.00
Atlantic & Yadkin, part of Southern	1,975,806.00..	Present,	4,104,710.00
Seaboard R. R., former value	20,191,720.00..	Present,	34,768,440.00
Atlantic Coast Line, former value	34,645,345.00..	Present,	50,867,800.00
Norfolk & Southern, former value	Not given.....	Present,	22,023,462.00

According to this evidence, either the Southern or the Coast Line, measured by either method considered by the Commissioners, is worth very much more than the value placed on them, and those are the roads that first started this litigation and are kicking the strongest. But suppose, for argument's sake, the Commissioners did not follow the direction of the statute, they were required to report their findings tentatively to the Legislature. They did so, and after due consideration and debate those values were adopted, became the values fixed by the Legislature itself. That

body had the right itself to assess the value of railroads and all other property in the State and its finding and act are not reviewable by this or any court unless the values fixed are spoliative and confiscatory. In this record there is no such allegation in either bill and not a scintilla of proof.

My brethren for plaintiffs are presenting these cases to your honors as if you were tax assessors sitting to review State authorities in matters over which the States have exclusive control and are not reviewable unless they have placed their value so high that they are spoliative and confiscatory.

I know your honors are great judges, but I doubt if you would give equal satisfaction as tax assessors, although I must admit that this court has made some very sage remarks in regard to valuing railroads which were evidently regarded by our Commissioners.

In the Backus case, 154 U. S., 122, it is said:

> "The value of the roadway at any given time is not the original cost, nor *a fortiori,* its ultimate cost after years of expenditure in repairs and improvements. On the other hand, its value cannot be determined by ascertaining the market price of adjacent lands, and adding the value of the cross-ties, rails, and spikes. The value of land depends largely upon the use to which it can be put, and the character of the improvements upon it. The assessable value, for taxation, of a railroad track can only be determined by looking at the elements on which the financial condition of the company depends, its traffic, as evidenced by the rolling stock and gross earnings *in connection with the capital stock.*"

In that case, Mr. Justice Brewer also said:

> "The judgment of a State board empowered to fix valuation of railroads for taxation cannot be set aside by testimony of witnesses that the values were other than fixed by the board, where there is no evidence of *fraud* or *gross error* in the system on which the valuations were made."

Upon this right of a State to value property within its jurisdiction, Mr. Justice Holmes said in Coulter *vs.* Railroads, 196 U. S., 599, cited fully in our brief:

> "It is not beyond the power of a State, so far as the Federal Constitution is concerned, to tax the franchise of a corporation at a different rate from other tangible property in the State."

Much evidence was taken in these cases relating to sales of private landed property in the attempt to show discrimination in values as against the railroads. As to the worth of such evidence, Justice Holmes said in the same case:

> "It is obvious that the accidental sales of property in a given year may be a misleading guide to average values apart from the testimony that some, at least of the conveyances, do not report true prices, yet they furnish the chief weapon of attack."

In considering this case, I beg your honors to carefully bear in mind that these valuations have been considered, passed upon, and approved by three State authorities:

1. The Board of Tax Commissioners.

2. The Legislature itself.

3. And finally reviewed by the Commissioner of Revenue by legislative authority upon petitions to review.

The separate action of these three authorities, and especially of the Legislature, raises a powerful presumption of legality and impartiality and is amply sufficient to prevail over the allegations of the plaintiffs' bills and the unreliable and easily-acquired evidence they offer. In the language of Justice Clarke, formerly an honored member of this court, in the recent case of Duane & Jackson, cited in our brief:

> "The case presented is clearly not one of that extreme inequality in taxation of which the Federal courts should lay hold, but involves rather a question of State policy, of a character which the people have been satisfied to leave to the judgment, patriotism, and sense of justice of representatives in their State Legislature."

No allegations and no proof to justify this court in disturbing State valuations.

We confidently assert that there is no evidence of inequality or partiality in the valuation of railroads and other property in the State. After allowing for the reduction made in 66 counties in land values, yet landed property is valued over 200 per cent higher than it was before the revaluation in 1919, while the Southern Railway property is valued barely 99 per cent more and some of these railroads not that much.

There is attached to defendants' answers a table showing taxable values of real and personal property in every county in North Carolina in 1919, and at the present time after reduction in 66 counties in 1920. To illustrate: In Beau-

fort County, where I reside, the taxable value in 1919 was $10,597,149.00. Tax value after revaluation and after reduction, $37,669,805.00. Guilford County, $30,943,498.00. After revaluation, $116,052,573.00.

The table shows an enormous increase in the value of private property, other than railroad property, in every county in this State upon which values taxes are paid at this time without complaint.

It is only the railroads that cost the State many thousands of dollars during present year to protect their property, that are complaining.

Railroads differ so from other species of property that they cannot be measured by the same rules, but we confidently assert that there is no evidence of any inequality in this record. If there is any, it is in favor of the railroads. But suppose there is, then in the terse language of Justice Holmes in the Coulter case: "Inequality, we repeat, is nothing unless it was in pursuance of a scheme."

This brings me to the point I regard as conclusive that plaintiffs are not entitled to relief demanded.

The relation of the Federal Government to the taxing systems of the States of the Union has been the subject of much discussion by the judges of this court, but there seems to be one clear and unqualified principle set forth in all the opinions which has never been overrated or qualified.

To warrant the Federal courts to interfere in State taxation and to set aside as discriminatory assessments for taxes, it must appear that the discrimination in favor of one class of property or other classes, as against others, was intentional and systematic. Greene *vs.* Louisville & I. R. R., 244 U. S., 499, 517; 37 Sup. Ct., 61 L. Ed., 1280; Ann. Cas. 1917E,

88; Sunday Lake Iron Co. *vs.* Township of Wakefield, 247 U. S., 350, 353; 38 Sup. Ct., 495; 62 L. Ed., 1154; Taylor *vs.* Louisville & Nashville R. R., 88 Fed., 350, 364, 365; 31 C. C. A., 537. In the Lake Iron Co. case it was said:

> "It is also clear that mere errors of judgment by officials will not support a claim of discrimination. There must be something more—something which in effect amounts to an intentional violation of the essential principle of practical uniformity. The good faith of such officers and the validity of their actions are presumed; when assailed, the burden of proof is upon the complaining party."

This subject is very fully discussed and all the Federal authorities cited in Union Pacific R. R. *vs.* Christiansen, Federal Reporter of November 10, 1921.

The latest utterance of this court on this subject is Duane *vs.* Jackson, cited in our brief, where it is very forcibly said:

> "While the nature of the subject does not permit of much finality of general statement, it may plainly be derived from the cases cited that since the system of taxation has not yet been devised which will return precisely the same measure of benefit to each taxpayer or class of taxpayers, in proportion to payment made, as will be returned to every other individual or class paying a given tax, it is not within either the disposition or power of this court to revise the necessarily complicated taxing systems of the States for the purpose of attempting to produce what might be thought to be a more just distribution of the burdens of taxation than that arrived at by the State Legislature (4 Pet., 517; 7 L. Ed., 939; 15 Wall., 319; 21 L. Ed., 179; 109 U. S., 400; 3 Sup. Ct., 205; 27 L. Ed., 976; 185 U. S., 371; 22 Sup. Ct., 673; 46 L. Ed., 949, *supra*),"

and that where, as here, conflict with Federal power is not involved, a State tax law will be held to conflict with the Fourteenth Amendment only where it proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation—"to spoliation under the guise of exerting the power of taxing." 134 U. S., 237; 10 Sup. Ct., 533; 33 L. Ed., 892; 173 U. S., 615; 19 Sup. Ct., 553; 43 L. Ed., 823; 239 U. S., 220, 36 Sup. Ct., 66; 60 L. Ed., 230, *supra*. For other inequalities of burden or other abuses of the State power of taxation, the only security of the citizen must be found in the structure of our Government itself. So early as 4 Pet., 563; 7 L. Ed., 939, *supra*, it was said by Chief Justice Marshall:

> "This vital power (of taxation) may be abused, but the Constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the State governments. The interest, wisdom, and justice of the representative body, and its relations with its Constitution, furnish the only security, where there is no express contract, against unjust and excessive taxation; as well as against unwise legislation generally."

The Federal courts are not a harbor of refuge for ill-advised and unequal legislation.

This is said by Justice Field in Mobile *vs.* Kimball, 102 U. S., 691, and reiterated by Justice McKenna in Magoun *vs.* Trust Company, 170 U. S., 293.

There are no allegations in these bills of a fraudulent purpose, or a combination or scheme of any kind to overvalue railroad property or to discriminate between that and other

property. Your honors will search in vain for a scintilla of evidence to support such charges. Proof without allegation is as ineffective as allegation without proof and in these records there will be found neither. Under the system of valuing property in North Carolina it is almost impossible that there should be any kind of scheme to overvalue railroad property and to undervalue lands.

Landed property is valued by three assessors in each township of the one hundred counties in our State. These assessors have no connection with the Central Tax Commission, and doubtless never see them.

This Central Tax Commission valued railroad property and their valuations are approved and adopted by the Legislature composed of 170 members. This valuation, by authority of the Legislature, was again reviewed upon plaintiff's petition by the Commissioner of Revenue.

It is thus perfectly manifest there could not be any scheme, mutual purpose or common design or desire to do any injustice to these plaintiffs. There is no real evidence that any mistake of jurisdiction has been made.

If the evidence proves anything it is that prior to the revaluation in 1919 railroad property and all other property had been valued much less than its real value and that this error has been corrected.

Respectfully submitted,

GEO. H. BROWN,
Of Counsel for Defendants.

FILED
OCT 30 1922
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922

No. 369

ATLANTIC & YADKIN RAILWAY COMPANY,

Appellant,

vs.

A. D. WATTS, ET AL.,

Appellees.

BRIEF FOR APPELLANT.

S. R. PRINCE,
Counsel for Plaintiff.

L. E. JEFFRIES,
W. M. HENDREN,
C. O. AMONETTE,
Of Counsel.

PRESS OF THE SUDWARTH CO., WASHINGTON

IN THE

Supreme Court of the United States

ATLANTIC & YADKIN RAILWAY COMPANY,

Appellant,

vs.

A. D. WATTS, ET AL.,

Appellees.

BRIEF FOR APPELLANT.

The Atlantic & Yadkin Railway Company, a North Carolina corporation, operating 161 miles of railroad in North Carolina, filed its Bill in the United States District Court for the Western District of North Carolina against A. D. Watts, Commissioner of Revenue of North Carolina, and 23 other tax assessing and collecting officers of the State and the counties and cities through which the Railway operates, seeking to enjoin the collection of taxes on an illegal overassessment of its property for ad valorem tax purposes and praying to be relieved of the payment of a franchise tax under a void franchise tax law.

The Three Judge Court assembled under Sec-

tion 266 of the Judicial Code, denied the application for an interlocutory injunction. Plaintiff, under an agreement with the State, paid its ad valorem taxes on a valuation of $1,975,806.00 (23), its assessment for 1919. Plaintiff secured a restraining order against the collection of further taxes pending the decision of this appeal.

This is a suit similar to that of Southern Railway Company vs. A. D. Watts, et al., No. 368, with which it has been consolidated for the argument, and counsel will not repeat the brief filed therein, but ask leave of the Court to refer thereto.

STATEMENT OF THE CASE.

For the year 1919, plaintiff's assessment was $1,975,806.00. For 1920, the Tax Commission increased the assessment to $4,104,710.00. In 1920, the Railway Company paid its taxes under protest. In 1921, the Commissioner of Revenue declined to make any change or reduction. Plaintiff's claim that the assessment of $4,104,710.00 is in excess of true value is based on:

(a) Statement of its operating results for five year period shows average deficit of $81,299.39 (8).

(b) Its total stock and bonded indebtedness is $2,500,000.00. Fair average market value would not exceed $1,750,000.00 (8).

(c) Amount of property, investment in road

and equipment, filed with Interstate Commerce Commission as of December 31, 1919, was $2,690,-349.00.

(d) Bureau of Valuation of the Interstate Commerce Commission has made a tentative report of cost of reproduction less depreciation, and if estimated value of land be added, the value thus arrived at is $2,886,570.00 (8).

(e) The Government declined to pay any standard return for the twenty-six months the Government had the road, due to a report by the Interstate Commerce Commission of an annual deficit during the test period of $57,477.72 (9).

Defendants aver in their answer that the assessment of $4,104,710.00 represents the true, actual value of said property (137); that the State Tax Commission assessed all of the lines operated by the Southern Railway, including plaintiff, together at the amount of $101,960,413.00 and then apportioned the above amount to plaintiff (138); that the apportionment was made by the Tax Commission in accordance with the plan suggested by the Tax Commissioner of the Southern Railway System (138); that plaintiff is a separate corporate entity, but that Southern Railway controls plaintiff through ownership of entire capital stock and operates plaintiff as a part of the Southern Railway System (139); that neither Southern Railway nor plaintiff is prejudiced by the assess-

ment together of the properties or the allocation of $4,104,710.00 against plaintiff; "that if the said total assessment of plaintiff's property were in any way in excess of the actual value of such property, this would result from the fact that other properties belonging to the Southern Railway System and to the same owner were underassessed and the difference added to the plaintiff's assessment by reason of the method of allocation suggested by the plaintiff itself and the Southern Railway Company." (139)

Plaintiff's proof on this point by its tax officer was:

> "That the total assessment of $101,960,413 placed by the State Tax Commission in 1920 upon property of plaintiff, Southern Railway Company and two other railroad companies was 207.8 per cent of the assessment of the same properties for 1919 and several previous years. That after the assessment of $101,960,413 finally was fixed by said Tax Commission, affiant was asked when in Raleigh by Mr. Maxwell, one of the Commissioners, and by Mr. Griffin, the Revaluation Clerk of the Commission, if he would perform the clerical work incident to the allocation of the assessment set out to plaintiff, to the several owned and leased lines of Southern Railway Company, to the Yadkin Railroad Company and to the High Point, Randleman, Asheboro and Southern Railroad Company. That in said conference with Messrs. Maxwell and Griffin the method of allocation was determined by them and that affiant's work in connection there-

with was merely clerical. That thereafter on July 21, 1920, affiant, as stated in the answer on page 5, wrote a letter to Mr. Griffin, the Revaluation Clerk of the Commission, to which was attached a statement setting out the values allocated to plaintiff and to the other railroads in accordance with the plan agreed upon by Messrs. Maxwell and Griffin as aforesaid. That the assessment of $4,104,710 placed upon the property of plaintiff was not suggested by affiant in any way except that affiant did make the figures according to the aforesaid plan. That plaintiff's assessment for 1919 was $12,-262.96 per mile which, multiplied by 207.8 per cent made the 1920 assessment of $25,482.43 per mile and this being multiplied by plaintiff's mileage in North Carolina showed a total assessment for 1920 of $4,104,710. Affiant further says that in said letter he wrote the quotation shown on page 7 of the answer without intention of suggesting or acknowledging that plaintiff's assessment was too low but only because of the fact that the tax rates in the several counties traversed by plaintiff and by the North Carolina Midland were materially lower than the tax rates in counties traversed by Southern Railway for which reason it would follow that the total amount of taxes paid by Southern Railway Company and all its affiliated lines in North Carolina would be reduced if values were imported into counties levying smaller tax rates." (54)

Defendants' proof is:

"He has read the affidavit filed by Murry R. Hubbard in the above entitled suit. It was

agreed between the affiant and Mr. Griffin and the said Murray Hubbard, Tax Commissioner of the Southern Railway System, that the said Murray Hubbard should take the total assessment of $101,960,413.00 and work out an apportionment of this total assessment among the different lines of the Southern Railway System in North Carolina, and Mr. Hubbard took the said assessment with him to Atlanta and worked out his own suggestion as to how it should be apportioned which suggestion he then transmitted to the State Tax Commission in the letter, a copy whereof is hereto attached and marked Exhibit A. As alleged in the answer of the defendants in the above entitled suit, the assessment of the properties of the Atlantic and Yadkin Railway Company made by the Tax Commission for the year 1920 was simply an adoption of this apportionment worked out and suggested by Mr. Hubbard. It was a suggested apportionment prepared and submitted by him as Tax Commissioner and representative of the Southern Railway System. It was not determined by the affiant nor by Mr. Griffin, but was adopted by the Tax Commission." (96)

The part the Tax Commissioner of Southern Railway System played in distributing the assessment is shown on pages 98 and 99 of the record.

Ad Valorem Assessment:

The assessment was not made in accordance with the statute in this:

(a) The tangible and intangible property of plaintiff was not assessed separately.

(b) Section 64 of the Machinery Act provides that the value of the tangible property shall be determined by use of actual cost of replacing the property. This was not done. If it had been, the proof is that the amount hereof would have been $2,886,570.00.

(c) Section 64 of the Machinery Act provides that the value of the franchise shall be determined by due consideration of the gross earnings as compared with the operating expenses. This was not done. If it had been done, the proof being that there was an annual deficit of $81,000.00, no value would have been arrived at on this basis. There is no justification in the law for arriving at the total value of Southern Railway Company and this company by capitalizing a net return which the Southern Railway Company had.

(d) Section 64 of the Machinery Act also provides that in arriving at the value of the franchise particular consideration should be given to the value placed upon the whole property by the pub-

lic, as evidenced by the market value of all capital stock, cerificates of indebtedness, etc. This was not done. If it had been done, the proof shows that the value under this plan would have been $1,750,000.00. This feature of the law was not followed in the consolidated method pursued by the Tax Commission. If it had been, the total result would have been much less.

Plaintiff had the right to have its property assessed independently of any other taxpayer. The defense in this case amounts to a plea of confession and avoidance. The assessment in and of itself is indefensible and should not stand unless the part played therein by the Tax Commissioner of the Southern Railway System estops plaintiff from taking advantage of the overassessment. After the total assessment of $101,960,413.00 was finally fixed over the protest of plaintiff, the Tax Commissioner of Southern Railway made the distribution of the total; he testifies he was asked by the Chairman of the Tax Commission to do this (54). The Tax Commission says it was agreed that he work out the apportionment (96). The Railway's tax officer advised the Commission the method pursued by him, namely, he found that the total 1920 assessment was 207.8 per cent times the total of the 1919 assessment and—

> "That plaintiff's assessment for 1919 was $12,262.96 per mile which, multiplied by 207.8 per cent made the 1920 assessment of $25,-482.43 per mile and this being multiplied by

plaintiff's mileage in North Carolina showed a total assessment for 1920 of $4,104,710."

In returning the distribution to the State Tax Commission, he said in part:

"If you feel that any of these values are too high, I would suggest that it would be entirely proper to give a further arbitrary increase to the North Carolina Midland and to the Atlantic & Yadkin in order to absorbe any reduction on the double track line. You understand, of course, that I am not wedded to this distribution and am making same only as a suggestion and for the purpose of affording you all possible assistance."

On this record we contend that certainly nothing was done to ratify the erroneous and unlawful total of $101,960,413.00. It is not a defense to this plaintiff's overassessment to say that but for such figure being allocated to plaintiff some other taxpayer would have had a larger assessment. The distribution may have been the best that could be made of the erroneous total. However arrived at, it was adopted by and became the Tax Commission's assessment, and if illegal should not stand. There was no agreement as to the amount of this assessment. There was merely a suggestion of the distribution of the erroneous total. This distribution was for the year 1920 and there is no proof that the Railway's tax officer made that distribution or any distribution for 1921, which is the as-

sessment complained of. Therefore, when plaintiff asked the Revenue Commissioner to review the assessment, that should have been done. If for any reason at that time plaintiff's property was overassessed and no change was made, we contend that the result is an unlawful assessment.

The ad valorem assessment is further void because of non-uniformity in that members of the same class are assessed differently, to the plaintiff's harm.

Plaintiff was entitled to a reduction in the assessed value of its property because under the facts its property was of less value in 1921 than in 1920, and for property generally in the State to be horizontally reduced in varying percents and plaintiff's property not to be reduced is an unlawful discrimination.

The assessment is void because the other property generally in the State has been intentionally and systematically undervalued, to-wit, at 67 per cent of true value, while plaintiff's property has been overvalued.

For the general reasons of invalidity and citations to sustain the same, leave is asked to refer to the brief of plaintiff in the case of Southern Railway Company vs. Watts, et al., No. 368 in this Court, with which this case has been consolidated for argument.

Franchise Tax:

1. The so-called franchise tax is not a franchise

tax, but is an additional property tax and void under the Uniformity Section of the North Carolina Constitution, and the enforcement of such law deprives plaintiff of the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States.

2. The so-called franchise tax is void because it is a burden upon interstate commerce contrary to the Commerce Clause of the Federal Constitution.

3. It is void because made a condition precedent to the doing of an interstate business.

The plaintiff has paid to counties and municipalities for the year 1921 on the stipulated assessment of $1,975,806.00 pending the litigation the sum of $22,086.18, whereas in 1920 it paid on an assessment of $4,104,710.00 the sum of $26,423.95. The reason for the amount paid up to now in 1921, notwithstanding the reduced assessment is the very marked increase in tax rates. If the assessment of $4,104,710.00 remains, the Atlantic & Yadkin Railway Company will pay total taxes of $50,-091.50. There is therefore involved over $20,000.00 in excess taxes.

Respectfully submitted,

S. R. PRINCE,
Counsel for Plaintiff.

L. E. JEFFRIES,
W. M. HENDREN,
C. O. AMONETTE,
Of Counsel.

Office Supreme Court, U. S.
FILED
MAY 15 1922
WM. R. STANSBURY
CLERK

No. 928 369

IN THE

Supreme Court of the United States

ATLANTIC AND YADKIN RAILWAY COMPANY,
Appellant,
vs.
A. D. WATTS, ET AL.,
Appellee.

No.....
In Equity.

Motion for Temporary Restraining Order to Supreme Court under Section 266 of the Judicial Code of the United States.

PRESS OF THE BYDWARTH COMPANY, WASHINGTON

IN THE

SUPREME COURT OF THE UNITED STATES

ATLANTIC AND YADKIN RAILWAY COMPANY,
Appellant,

vs.

A. D. WATTS, ET AL.,
Appellee.

No.....
In Equity.

Motion for Temporary Restraining Order to Supreme Court under Section 266 of the Judicial Code of the United States.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now, appellant, Atlantic and Yadkin Railway Company, by its attorneys, representing to the Court that it has appealed to the Supreme Court of the United States from an order hereto-

fore entered herein on March 18, 1922, by the District Court of the United States for the Western District of North Carolina, denying appellant's application for an interlocutory injunction, which appeal has been allowed by said District Court and the record on said appeal has heretofore this day been filed and docketed in this Court, and respectfully moves the Court to grant a temporary restraining order herein pending the hearing and decision of such appeal by this Court, and for grounds of its motion shows:

1. On September 30, 1921, appellant (hereinafter called plaintiff) filed its bill in the United States District Court for the Western District of North Carolina, making as defendants thereto A. D. Watts individually and as Commissioner of Revenue of the State of North Carolina, Baxter Durham, Auditor of the State of North Carolina, Benjamin R. Lacey, Treasurer of the State of North Carolina, James S. Manning, Attorney General of the State of North Carolina, and eight Sheriffs of the several counties in North Carolina through which appellant operated and paid taxes, and twelve Tax Collectors of the cities and towns through which appellant operated and paid taxes. The necessity for having twenty-four defendants was that the Revenue Commissioner certified the assessment complained of to the several counties, cities and school districts so soon after the fixing of the assessment as that plaintiff

had not an opportunity to enjoin the certification and therefore was compelled to enjoin the tax collecting officers of the State in each tax district from collecting taxes on the assessment which had been so certified.

2. The bill filed sought to enjoin the State's taxing officers (1) from collecting property taxes upon an excessive ad valorem assessment of $4,104,710.00; (2) from collecting a franchise tax under a void Franchise Tax Law; (3) from collecting a franchise or privilege tax based upon an excessive assessment of $4,104,710.00.

Ad Valorem Assessment. The ad valorem assessment, it was averred, was illegal for the following reasons:

(a) The assessment of plaintiff's property at $4,104,710.00 is in excess of the true value in money of said property for tax purposes as the same is defined under the North Carolina law, and the collection of taxes thereon deprives plaintiff of the equal protection of the law contrary to the Constitution of the United States.

(b) The North Carolina tax officials failed and refused to follow the method prescribed by the statutes of North Carolina for the assessment of railroads, but assessed the property of plaintiff on a basis not authorized or sanctioned by the North Carolina statute, such basis being arbitrary

and illegal and the assessment arrived at therefore invalid.

(c) The method of valuation for tax purposes followed by the tax officers of North Carolina imported into the State of North Carolina values which are elsewhere and thus violated the Commerce Clause of the Constitution of the United States.

(d) The County Boards of Review of five of the eight counties through which plaintiff operates made horizontal reductions in the assessed value in said counties as a whole of real property varying from 25 to 33 1/3 per cent. The Revenue Commissioner declined to give to plaintiff similar horizontal reductions in plaintiff's right of way, lands and structures thereon, situated in said counties. This was an illegal discrimination and this declination on the part of the Revenue Commissioner violated Section 3 of Article 5 of the Constitution of North Carolina and violated the Fourteenth Amendment to the Constitution of the United States.

(e) That the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment of the Federal Constitution have been violated, in that, while plaintiff's property is alleged by the State to be assessed at its true value for tax purposes, the property of other taxpayers generally in the State is habitually, cus-

tomarily and systematically assessed for tax purposes at less than true value.

Franchise Tax. The following are the grounds upon which we base our contention that the franchise tax law is void:

(a) The ad valorem assessment being in excess of true value for tax purposes, the franchise tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

(b) The so-called franchise tax is not a franchise tax, but is in fact an ad valorem tax. Since it is an ad valorem tax, it is void because not levied equally upon all property holders in the State, and is, therefore, contrary to Section 3 of Article 5 of the Constitution of North Carolina, and by reason of the enforcement thereof, plaintiff is deprived of the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States.

(c) If the so-called franchise tax is held to be a franchise tax and not a property tax, then it is unconstitutional and void, because it is a tax upon the privilege of engaging in interstate commerce and violates the Commerce Clause of the Constitution of the United States.

3. Plaintiff, at the time of filing its bill, made

application for an interlocutory injunction under Section 266 of the Judicial Code. The District Judge entered an order fixing October 6, 1921, for hearing the application for an interlocutory injunction and directing that not less than five days' notice be given the Governor and the State of North Carolina, and calling to his assistance to hear the application, Edmund Waddill, Jr., United States Circuit Judge, and Henry G. Connor, United States District Judge for the Eastern District of North Carolina, and giving notice of the hearing to all defendants.

4. October 6, 1921, the Three-Judge Court assembled, defendants filed a motion to dismiss bill, which was denied. The plaintiff, by its counsel, and the defendants, through the Attorney General of North Carolina, on October 6, 1921, entered into a stipulation, which stipulation was approved by the three-judge bench and filed as a part of the record in this cause. The plaintiff in the stipulation agreed to pay and has paid all taxes, other than the franchise tax, as they might come due on an assessed valuation of $1,975,806 (the assessment complained of as being excessive and otherwise void being $4,104,710.00). The defendants agreed not to demand or collect or begin proceedings of any character for the nonpayment of said taxes on any valuation in excess of said $1,975,806.00 "until the further order of the Court or pending this action." The Court

entered an order based upon the stipulation, reciting that the application for preliminary injunction had been continued by agreement of parties in order that the defendants might have time to answer and prepare their defense.

5. November 30, 1921, defendants filed their answer. Thereafter, plaintiff and defendants, within the time stipulated, filed affidavits in support of and against the application for interlocutory injunction.

6. January 24, 1922, the application for interlocutory injunction was heard by the Three-Judge Court, which took the matter under consideration and gave thirty days within which to file briefs.

7. March 18, 1922, the Three-Judge Court filed its per curiam opinion, which, without expression of reasons therefor, held that plaintiff had not made such a case as entitled it to an interlocutory injunction as prayed for and entered on the same day an order refusing and denying the injunction as prayed for. This order concluded as follows:

> "And it is further ordered that the defendants shall not proceed to enforce the collection of taxes involved in this litigation, for the period of thirty days from the date of this order, to the end that complainant may take such action in the premises as it is advised to."

8. March 31, 1922, plaintiff filed its petition

for appeal and for an order staying the proceedings pending appeal to the Supreme Court. This petition was continued at the request of the State, as shown by the Court's order, to April 10, 1922.

9. April 10, 1922, the Court granted the appeal, and ordered that plaintiff's petition for the further stay be continued for a hearing by the Three-Judge Court, this order recited that the appeal was without prejudice to plaintiff as to the later hearing of the matter of further stay asked for.

10. April 15, 1922, the Three-Judge Court denied the stay until the appeal could be decided by the Supreme Court, in the following language:

> "The Court, being of the opinion that the application to continue in effect the thirty-day stay granted March 16, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this Court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States, denies the application for continuance of said stay until the appeal is decided by the Supreme Court of the United States."

The Court extended the restraint of the State's officers ordered March 18, 1922, for thirty days, to May 15, 1922, in the following language:

> "And it appearing to the Court that the

hearing of this application has been delayed through no fault of plaintiff's, and the Court being of the opinion that the status quo should be continued until the application for restraint pending the appeal can be made to and decided by the Supreme Court of the United States, ORDERS that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order."

Plaintiff further shows the Court that unless the defendants are restrained pending the decision of this Court on the appeal taken under Section 266 of the Judicial Code from the order of the Three-Judge Court denying the interlocutory injunction, the State's officers will immediately collect the taxes in dispute and plaintiff's appeal to this Court from the order denying the restraint will be fruitless and irreparable injury will be done it. If this Honorable Court should hold on the appeal now pending here that plaintiff was entitled to an interlocutory injunction, restraining until the merits the collection of the taxes on the excess of the ad valorem assessment over the assessment paid on by stipulation in the record or under the void franchise tax law, the value of that decision would be lost to plaintiff, because the plaintiff will have paid the taxes to restrain which payment until decision on the merits the appeal is taken; and if at the trial on the merits the assessment is held void, plaintiff will suffer irreparable injury in that it will have to bring twenty-four suits to recover the taxes illegally

exacted and paid to the counties, cities and separate school districts in the State of North Carolina, and there is not any adequate remedy provided under the law of North Carolina for the recovery of the franchise tax, which is paid directly to the State's officers. On the contrary, if the State should win ultimately, it has a first lien on all of the property for the collection of said taxes, with such penalty or interest as the law may allow.

In support of this motion, plaintiff attaches hereto a copy of the record in this case on appeal to this Court for interlocutory injunction, which record by stipulation thereto attached is made the record on this motion.

Wherefore, plaintiff prays that the temporary restraint herein asked be granted.

ATLANTIC AND YADKIN RAILWAY COMPANY,

By S. R. PRINCE,

Its Attorney.

ATLANTIC AND YADKIN RAILWAY COMPANY,
Plaintiff,

vs.

A. D. WATTS, ET AL.,
Defendants.

It is agreed by the parties to this cause that the record on appeal from the order denying the interlocutory injunction may be considered as the record on hearing of the motion of appellant for stay of the proceedings until the said appeal can be heard and determined.

.....
Attorney for Appellant.

.....
Attorney for Appellee.

ATLANTIC AND YADKIN RAILWAY COMPANY,
Plaintiff,
vs.
A. D. WATTS, ET AL.,
Defendants.

The defendants will take notice that, on or before May 15 1922, the plaintiff will perfect its appeal of this suit to the Supreme Court of the United States, by filing the duly certified record thereof with the Clerk of said Court, and will thereafter, on the 15 day of May, 1922, about the hour of noon present to the Court in its court room in Washington, D. C., the foregoing motion for the maintenance of the status quo and temporary restraint of the State's tax officers pending the determination of its said appeal.

This 26 day of April, 1922.

(S) S K Vance
Attorney for Appellant.

Receipt is acknowledged of the foregoing notice and defendants waive any further or other notice thereof. This 27 day of April, 1922.

(S) Wm P. Bynum
Attorney for Appellee.

Office Supreme Court, U. S.
FILED
MAY 10 1922
WM. R. STANSBURY
CLERK

No. 980381

IN THE

SUPREME COURT OF THE UNITED STATES

SEABOARD AIR LINE RAILWAY COMPANY,
Appellant,

vs.

A. D. WATTS, ET AL.,
Appellees.

Motion for Temporary Restraining Order Pending Appeal to Supreme Court under Section 266 of the Judicial Code of the United States.

MURRAY ALLEN,
Counsel for Appellant

FORNEY JOHNSTON,
JAMES F. WRIGHT,
Of Counsel.

COMMERCIAL PRINTING COMPANY, RALEIGH, N. C.

IN THE

SUPREME COURT OF THE UNITED STATES

SEABOARD AIR LINE RAILWAY COMPANY,
Appellant,

vs.

A. D. WATTS, ET AL.,
Appellees.

Motion for Temporary Restraining Order Pending Appeal to Supreme Court under Section 266 of the Judicial Code of the United States.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes, now appellant, Seaboard Air Line Railway Company, by its counsel, representing to the Court that it has appealed to the Supreme Court of the United States from an order heretofore entered herein on March 18th, 1922, by the District Court of the United States for the Eastern District of North Carolina, denying appellant's application for an interlocutory injunction, which appeal has been allowed by said District Court and the record on said appeal has heretofore been filed and docketed in this Court, and respectfully moves the

Court to grant a temporary restraining order herein pending the hearing and decision of such appeal by this Court, and for grounds of its motion shows:

1. On November 20th, 1921, appellant (hereinafter called plaintiff) filed its bill in the United States District Court for the Eastern District of North Carolina, making as defendants thereto A. D. Watts, Commissioner of Revenue of the State of North Carolina, Baxter Durham, Auditor of the State of North Carolina, Benjamin R. Lacy, Treasurer of the State of North Carolina and James S. Manning, Attorney General of the State of North Carolina, and the sheriffs of the twenty-six counties in North Carolina through which appellant operates its railroad and in which it pays taxes, and sixty-nine tax collectors of the cities and towns and other governmental subdivisions through which appellant operates and in which it pays taxes. The necessity for having ninety-nine defendants was that the Revenue Commissioner certified the assessment complained of to the several counties, cities and school districts so soon after the fixing of the assessment that plaintiff had not an opportunity to enjoin the certification and therefore was compelled to enjoin the tax collecting officers of the State in each tax district from collecting taxes on the assessment which had been so certified.

2. The bill filed sought to enjoin the State's taxing officers

(1) from collecting property taxes upon an excessive ad valorem assessment of $34,834,685.00;

(2) from collecting a franchise tax under a void franchise tax law;

(3) from collecting a franchise or privilege tax based upon an excessive assessment of $34,834,685.00.

Ad Valorem Assessment. The ad valorem assessment, it was contended, was illegal for the following reasons:

(a) The assessment of plaintiff's property at $34,834,-685.00 is in excess of the true value in money of said property for tax purposes as the same is defined under the North Carolina law, and the collection of taxes thereon deprives plaintiff of the equal protection of the law, contrary to the Constitution of the United States.

(b) The North Carolina tax officials failed and refused to follow the method prescribed by the statutes of North Carolina for the assessment of the value of railroads, but assessed the property of plaintiff on a basis not authorized or sanctioned by the North Carolina statute, such basis being arbitrary and illegal and the assessment arrived at therefore invalid.

(c) The method of valuation for tax purposes followed by the tax officials of North Carolina imported into the State of North Carolina values which are elsewhere and thus violated the Commerce Clause of the Constitution of the United States.

(d) The County Boards of Review of twenty of the twenty-six counties through which plaintiff operates made horizontal reductions in the assessed value in said counties as a whole of real property varying from 1.1 per cent to 40 per cent, making an average reduction of approximately 22 per cent. The Revenue Commissioner declined to give to plaintiff similar horizontal reductions in plaintiff's right of way lands and structures thereon, situated in said counties. This was an illegal discrimination and this declination on the part of the Revenue Commissioner violated Section 3 of Article 5 of the Constitution of North Carolina and violated the Fourteenth Amendment to the Constitution of the United States.

(e) That the failure and refusal of the Commissioner of Revenue to grant the complainant a reduction in the assessment of its properties while the counties made a systematic reduction in the valuation of other real estate and property generally resulted in a discrimination against the complainant; and that such discrimination is in contravention of Section 3 of Article 5 of the Constitution of North Carolina and likewise denies the complainant the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States.

(f) That the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States are violated in that complainant's property is assessed for taxation at its true value within the meaning of the statutes of North Carolina, or more than its true value, while the property of other taxpayers generally in the State is appraised and assessed for taxation at less than its true value and that this appraisal and assessment of the property of other citizens and taxpayers of the State has been long continued and is arrived at under a scheme of taxation which shows intent to place an undue burden of taxation upon complainant and its property.

(g) That the scheme of taxation of the State of North Carolina and the assessment of the properties of the various classes of taxpayers is by settled purpose and intent so designed and carried out that, while the property of complainant is assessed at its true value in money within the meaning of the tax statutes of North Carolina, or more than its true value, the large proportion of the property in the State is assessed at less than its true value in money, thereby casting an undue and excessive burden upon complainant, in violation of the Uniformity Clause of the Constitution of the State of North Caro-

lina and in violation of the Fourteenth Amendment to the Constitution of the United States.

Franchise Tax. The following are the grounds upon which plaintiff bases its contention that the franchise tax law is void:

(a) The ad valorem assessment being in excess of true value for tax purposes, the franchise tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

(b) The so-called franchise tax is not a franchise tax, but is in fact an ad valorem tax. Since it is an ad valorem tax, it is void because not levied equally upon all property holders in the State, and is therefore, contrary to Section 3 of Article 5 of the Constitution of North Carolina, and by reason of the enforcement thereof, plaintiff is deprived of the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States.

(c) If the so-called franchise tax is held to be a franchise tax and not a property tax, then it is unconstitutional and void, because it is a tax upon the privilege of engaging in interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

(d) That if the franchise tax or privilege tax be imposed for the privilege of engaging in intrastate commerce, it is measured in part by the value of the privilege of engaging in interstate commerce, in that it is based upon the entire value, including values derived from use in interstate commerce, and is, therefore, a burden imposed upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(e) That the payment of the so-called franchise or privilege tax is exacted as a condition precedent to the

right of complainant to do "any business" in the State, whether interstate or intrastate, and, therefore unconstitutional and void.

(f) That the assessment made is void, in that it includes in the value used as a basis for arrival at the franchise or privilege tax the value of property not used in the business for which the privilege is exacted, and such law and the enforcement thereof, in the manner set forth, violates the Fourteenth Amendment to the Constitution of the United States.

(g) That if the so-called franchise tax is a tax for the privilege of doing business it is void because under the tax system of the State of North Carolina which includes an ad valorem tax on the full value of its property in the State, including as a part thereof value it has due to its use in interstate commerce, plus a franchise or privilege tax upon the full value of the said property for ad valorem purposes, plus an income tax of three per cent on its net operating income, does in practical operation result in a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

(h) That the so-called franchise or privilege tax is levied upon an erroneous assessment of complainant's property, in that the said property is assessed at its true value under the tax laws of the State of North Carolina, whereas, the property of individuals and other corporations is assessed at less than its true value, and complainant has been illegally denied deductions in valuation allowed other corporations and individuals.

(i) That the so-called franchise or privilege tax is unconstitutional and void, in that the Legislature of North Carolina has not levied a tax on property for the support of the State government, as required by Section

3, Article 5, of the Constitution of North Carolina, but has attempted to secure the entire revenue for the support of the State government by franchise, income, inheritance and taxes of similar nature.

3. Plaintiff, at the time of filing its bill, made application for in interlocutory injunction under Section 266 of the Judicial Code. The District Judge entered an order fixing December 12th, 1921, for hearing the application for an interlocutory injunction and directing that not less than five days notice be given the Governor and the State of North Carolina, and calling to his assistance to hear the application, Edmund Waddill, Jr., United States Circuit Judge, and James E. Boyd, United States District Judge for the Western District of North Carolina, and giving notice of the hearing to all defendants.

4. By stipulation of counsel the hearing was continued to January 24th, 1922, at Greensboro, N. C., at which time the Three-Judge Court assembled, and defendants filed a motion to dismiss bill, which was denied. Counsel for plaintiff and defendants entered into a stipulation, which stipulation was approved by the Three-Judge Court and filed as a part of the record in this cause. The plaintiff in the stipulation agreed to pay and has paid all taxes, other than the franchise tax, as they might come due on an assessed valuation of $27,119,384.00 (the assessment complained of as being excessive and otherwise void being $34,834,685.00). The defendants agreed not to demand or collect or begin proceedings of any character for the non-payment of said taxes on any valuation in excess of said $27,119,384.00, "until the further order of the Court."

5. December 21st, 1921, defendants filed their answer. Thereafter, plaintiff and defendants, within the time stipulated, filed affidavits in support of and against the application for interlocutory injunction.

6. January 24th, 1922, the application for interlocutory injunction was heard by the Three-Judge Court, which took the matter under consideration and gave thirty days within which to file briefs.

7. March 18th, 1922, the Three-Judge Court filed its per curiam opinion, which, without expression of reasons therefor, held that plaintiff had not made such a case as entitled it to an interlocutory injunction as prayed for and entered on the same day an order refusing and denying the injunction as prayed for. This order concluded as follows:

> "And it is further ordered that the defendants shall not proceed to enforce the collection of taxes involved in this litigation, for the period of thirty days from the date of this order, to the end that complainant may take such action in the premises as it is advised to."

8. March 30th, 1922, plaintiff filed its petition for appeal and for an order staying the proceedings pending appeal to the Supreme Court.

9. April 15th, 1922, the District Court granted the appeal.

10. April 15th, 1922, the Three-Judge Court denied the stay until the appeal could be decided by the Supreme Court, in the following language:

> "The Court, being of the opinion that the application to continue in effect the thirty day stay granted March 18th, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this Court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States, denies the application for con-

tinuance of said stay until the appeal is decided by the Supreme Court of the United States."

The Court extended the restraint of the State's officers ordered March 18th, 1922, for thirty days, to May 15th, 1922, in the following language:

"And it appearing to the Court that the hearing of this application has been delayed through no fault of plaintiff's, and the Court being of the opinion that the status quo should be continued until the application for restraint, pending the appeal, can be made to, and decided by, the Supreme Court of the United States, ORDERS that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order."

11. Subsequent to the order referred to in the foregoing section, counsel for plaintiff and defendants entered into an agreement that the application of the plaintiff to the Supreme Court of the United States for a temporary restraining order herein, pending the hearing and decision of the appeal by the Supreme Court, from the order of the Three-Judge Court denying plaintiff's application for an interlocutory injunction, be submitted to the Supreme Court on May 15th, 1922, and that the status fixed by the order of the Three-Judge Court on April 15th shall continue until such application has been heard and determined by the Supreme Court.

12. Plaintiff further shows the Court that unless the defendants are restrained pending the decision of this Court on the appeal taken under Section 266 of the Judicial Code from the order of the Three-Judge Court denying the interlocutory injunction, the State's officers will immediately collect the taxes in dispute and plaintiff's appeal to this Court from the order denying the restraint will be fruitless and irreparable injury will be

done it. If this Honorable Court should hold on the appeal now pending here that plaintiff was entitled to an interlocutory injunction, restraining, until hearing on the merits, the collection of the taxes on the excess of the ad valorem assessment over the assessment on which taxes were paid by stipulation in the record, or under the void franchise tax law, the value of that decision would be lost to plaintiff, because the plaintiff will have paid the taxes to restrain which payment until decision on the merits the appeal it taken; and if at the trial on the merits the assessment is held void, plaintiffs will suffer irreparable injury, in that it will have to bring ninety-five suits to recover the taxes illegally exacted and paid to the counties, cities and separate school districts in the State of North Carolina, and there is not any adequate remedy provided under the law of North Carolina for the recovery of the franchise tax, which is paid directly to the State's officers. On the contrary, if the State should win ultimately, it has a first lien on all of the property of plaintiff for the collection of said taxes, with such penalty or interest as the law may allow, and consequently the interests of the State of North Carolina cannot be prejudiced.

In support of this motion, plaintiff refers to the record in this case on appeal to this Court for interlocutory injunction, which record by stipulation hereto attached is made the record on this motion.

Wherefore, plaintiff prays that the temporary restraint herein asked be granted.

MURRAY ALLEN,
Counsel for Plaintiff, Appellant.

FORNEY JOHNSTON,
JAMES F. WRIGHT,
Of Counsel.

North Carolina—Wake County.

Murray Allen, being duly sworn, says: That he is one of the counsel for appellant in the case of Seaboard Air Line Railway Company v. A. D. Watts, Commissioner of Revenue of North Carolina et als.; that the facts set forth in the foregoing motion are true of his own knowledge. MURRAY ALLEN.

Subscribed and sworn to before me this 5th day of May, 1922. J. A. SCOTT,

Notary Public.

My commission expires 2d day of May, 1924.

SEABOARD AIR LINE RAILWAY COMPANY,
Plaintiff,

vs.

A. D. WATTS, ET AL.,
Defendants.

The defendants will take notice that, on or before May 8th, 1922, the plaintiff will perfect its appeal of this suit to the Supreme Court of the United States, by filing the duly certified record thereof with the Clerk of said Court, and will thereafter on the 15th day of May, 1922, about the hour of noon, present to the Court, in its Court Room in Washington, D. C., the foregoing motion for the maintenance of the status quo and temporary restraint of the State's tax officers pending the determination of its said appeal.

This 6th day of May, 1922.

MURRAY ALLEN,
Counsel for Plaintiff.

Receipt is acknowledged of the foregoing notice and defendants waive any further or other notice thereof.

This 6th day of May, 1922.

JAMES S. MANNING,
Counsel for Defendants and Attorney General of N. C.

SEABOARD AIR LINE RAILWAY COMPANY,
Plaintiff,

vs

A. D. WATTS, ET AL.,
Defendants.

It is agreed by the parties to this cause that the record on appeal from the order denying the interlocutory injunction may be considered as the record on hearing of the motion of appellant for stay of the proceedings until the said appeal can be heard and determined.

MURRAY ALLEN,
Counsel for Plaintiff.

JAMES S. MANNING,
Counsel for Defendants and Attorney General of N. C.

Supreme Court, U. S.
FILED
NOV 6 1922
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922

No. 381

SEABOARD AIR LINE RAILWAY COMPANY,
Appellant.

vs.

A. D. WATTS, COMMISSIONER OF REVENUE OF NORTH CAROLINA, ET AL.,
Appellees.

BRIEF OF APPELLANT

MURRAY ALLEN,
Counsel for Appellant.

ROBERT JOHNSTON,
JAMES F. WRIGHT,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922

No. 381

SEABOARD AIR LINE RAILWAY COMPANY,
Appellant.

vs.

A. D. WATTS, COMMISSIONER OF REVENUE OF NORTH CAROLINA, ET AL.,
Appellees.

BRIEF OF APPELLANT

MURRAY ALLEN,
Counsel for Appellant.

FORNEY JOHNSTON,
JAMES F. WRIGHT,
Of Counsel.

INDEX

PAGE

Statement of Case ---- 1
Specifications of Error ---- 7
Arugment ---- 10
I. Principles governing issuance of Interlocutory Injunction ---- 12
II. The Tax Laws of North Carolina by necessary construction, create an unlawful discrimination in the assessment of complainant's property for taxation ---- 16
III. The Tax Laws of North Carolina as administrated create an unlawful discrimination against complainant in that they deny complainant equality and uniformity in the taxation of its property ---- 21
IV. The collection of taxes based upon an assessment which denies a tax payer equality and uniformity in taxation will be enjoined ---- 28
1. The assessment casts a cloud upon complainant's title ---- 40
2. Complainant has no adequate remedy at law ---- 41
3. If complainant is required to pay its taxes under protest and sue to recover back this will lead to a multiplicity of suits ---- 46
4. Complainant will suffer irreparable damage ---- 49
V. The Franchise Tax is unconstitutional and void ---- 50
First: It is not a franchise tax but an ad valorem tax and is not levied on other property ---- 51
Second: It is levied on an erroneous assessment ---- 52
Third: It is a burden on interstate commerce ---- 52
Appendix ---- 61

TABLE OF CASES CITED.

PAGE

Allen v. Pullman Co., 191 U. S., 171 55
Allen v. B. & O. R. R. Co., 114 U. S., 311 45
Assessors v. Pullman Co., 60 Fed. Rep., 37 43
Ayers, In re, 123 U. S., 500 45
Bank v. Mylin, 76 Fed., 385 46
Barrett v. New York, 232 U. S., 14 54
Bickett v. Tax Commission, 177 N. C., 436 57
Boyer v. Boyer, 113 U. S., 689 34
Bridge Co., Ex parte, 62 Ark., 461 30
Bureau County v. C. B. & Q. R. Co., 44 Ill., 229 36
Burroughs on Taxation, p. 169 51
C. B. & Q. R. Co. v. Board of Equalizers, 67 Fed., 411 30
C. M. & St. P. Ry. Co. v. Kendall, 278 Fed., 298 31
Cohen v. Delavina, 104 Fed., 946 14
Colorado Eastern R. Co. v. C. B. & Q. Ry. Co., 141 Fed., 898 (C. C. A.) 14
Commissioners v. Tobacco Co., 116 N. C., 446 56
Cooley on Taxation, 780 41
County of San Mateo v. Railroad, 13 Fed., 722 31
County of Santa Clara v. Railroad, 18 Fed., 385 31
Cummings v. Nat. Bank, 101 U. S., 153 ..... 29, 30, 31, 34, 43, 45
Crutcher v. Kentucky, 141 U. S., 47 55
Cyc., Vol. 37, p. 1264 37
Dane v. Jackson, 41 U. S., Sup. Ct. Rep., 566 29
Dundee M. & T. Co. v. School Dist., 21 Fed. Rep., 151 31
Dundee M. & T. Co. v. Parrish, 24 Fed., 197 35
Dodge v. Nat. Bank, 109 Fed., 726 55
Elliott on Railroads, (2d. Ed.) Sec. 751-b 37
Elliott on Railroads, (2d. Ed.) Sec. 751 43
Foster's Fed. Prac., Vol. 1, Sec. 209 43
Fargo v. Hart, 193 U. S., 490 48
Gage v. Kaufman, 133 U. S., 471 41
G. H. & S. A. R. Co. v. Texas, 210 U. S., 217 ..... 51, 53, 55
Gregg v. Sanford, 65 Fed., 151 46

PAGE

Greene v. L. & I R. R. Co., 244 U. S., 499----30
Guano Co. v. Biddle, 158 N. C., at p. 212----57
Hagood v. Southern, 117 U. S., 71----45
Hills v. Exchange Bank, 105 U. S., 319, 322----43
Insurance Co. v. Bailey, 13 Wal., 616----40
Irving v. Carpenters & Joiners of America, 180 Fed., 896----14
Judson on Taxation (2d Ed.) 232----54
Joplin etc. Ry. Co. v. Public Service Commission of Missouri, 267 Fed., 584----13
Kansas City Ry. Co. v. Kansas, 240 U. S., 227----53
Kemmerer v. Midland Oil & Drilling Co., 229 Fed., 872----13
Kryptok Co. v. Stead Lens Co., 190 F., 767----13
Kyle v. Commissioners, 75 N. C., at p. 446----56
Lacy v. Packing Co., 134 N. C., 573----57
Lindsay v. Bank, 156 U. S., 485, 494----45
Long v. Watts (N. C.), 110 S. E., 765----46
Louisville Trust Co. v. Stone, 107 Fed., 305----32
L.& N. R. R. Co. v. Greene, 244 U. S., 522----40
L. & N. R. R. Co., v. Gaines, 3 Fed. Rep., 266----44
Lyon v. Alley, 130 U. S., 177, 187----41, 43
Ludwig v. Telegraph Co., 216 U. S., 146----55
McGahey v. Virginia, 135 U. S., 676----45
Nashville, etc., R. Co. v. Taylor, 86 Fed., 168----32
National Bank v. Kimball, 103 U. S., 732----34
Nulomoline Co. v. Stromeyer, 240 F., 228----12
Ogden City v. Armstrong, 168 U. S., 224----43
Ohio River & W. R. Co. v. Dittey, 232 U. S., 576----41
Oklahoma v. Wells Fargo & Co., 223 U. S., 298----54, 55
Pelton v. Nat. Bank, 101 U. S., 143----31, 34, 43
Pingree v. Auditor General, 120 Mich., 95----52
Pittsburg etc. Ry. v. Board of Public Wks., 172 U. S., 32----46
Pomeroy Eq. Jur., (3d Ed.) p. 418----47
Pomeroy Eq. Jur., (3d Ed.) Sec. 1345----41
Porter v. Langley, (Texas) 155 S. W., 1043----30
Postal Co. v. Richmond, 99 Va., 102----54
Postal Telegraph & Cable Co. v. Adams, 155 U. S., 688----53

PAGE

Provident Institution v. Massachusetts, 6 Wall., 611 52
Pullen v. Corporation Commission, 152 N. C., 553 56
Pyle v. Brenneman, 122 Fed., 787 ..... 48, 50
Railroad & Telephone Companies v. Board of Equalizers, 85 Fed., 302 13
Railroad Commission of Lousiana v. Texas & Pacific Ry. Co., 144 Fed., at p. 73 14
Railroad v. Commissioners, 72 N. C., 10 57
Railroad v. Newbern, 147 N. C., at p. 165 57
Raymond v. Chicago Union Traction Co., 207 U. S., 20 ..... 22, 31, 32, 40, 48, 50
Reagan v. Farmers' Loan & Trust Co., 154 U. S., 362 ..... 22, 31
Redmond v. Commissioners, 106 N. C., 122 58
Ruling Case Law, Vol. 14, p. 357 13
Ruling Case Law, Vol. 26, p. 35 52
St. L. & S. W. Ry. Co. v. Arkansas, 235 U. S., 350 ..... 51, 54, 55
Sanford v. Poe, 69 Fed., 546 47
Seaboard Air Line Ry. Co. v. R. R. Commission of Ala., 155 F., 792 14
Shelton v. Platt, 139 U. S., 591 43
Sherrod v. Dawson, 154 N. C., 525 43
Shubert v. Woodward, 167 Fed., 47 14
Singer Sewing Machine Co. v. Benedict, 229 U. S., 481 41
Smith v. Wilkins, 164 N. C., 140 57
Southern Ry. Co. v. Asheville, 69 Fed., 360 45
Southern Ry. Co. v. N. C., Corporation Commission, 99 Fed., 162 15
Spelling on Extraordinary Remedies, Sec. 642 40
Spelling on Extraordinary Remedies, Sec. 649 37
Spelling on Extraordinary Remedies, Sec. 665 .....
Stanley v. Supervisors, 121 U. S., 535 ..... 34, 37
State v. Stonewall Ins. Co., 89 Ala., 335 52
Taylor v. Louisville & N. Ry. Co., 88 Fed., 350 ..... 36, 46
Trustees of Railroad v. Guenther, 19 Fed., 395 ..... 30, 34
Tyler, In re, 149 U. S., 164 ..... 44, 46
Tyler v. Savage, 143 U. S., 79 43

PAGE

Union Pacific Ry. v. Cheyenne, 113 U. S., 516----------41, 43
Webster v. Bell, 68 Fed., 183----------54
Wells, Fargo & Co. v. Nevada, 248 U. S., 165----------53, 55
Western Union Tel. Co. v. Kansas, 216 U. S., 1----------55
Western Union Tel. Co. v. Norman, 77 Fed., 13----------47

EXTRACTS FROM CONSTITUTION AND STATUTES OF NORTH CAROLINA

Constitution:
Article 5, Sec. 3 (Appendix, p. 61)----------29, 55
Article 7, Sec. 9 (Appendix, p. 61)----------29, 58, 59
Statutes:
Machinery Act of 1921, Chapter 38, Public Laws of N. C., 1921
Section 28 (a) (Appendix, p. 62)----------4, 19, 20
Section 28 (e) (Appendix, p. 63----------2, 21
Section 28 (g) Appendix, p. 64)----------5, 19, 20
Section 64 (Appendix, p. 64----------2
Section 65 (Appendix, p. 65----------20
Section 98 (Appendix, p. 65)----------20
Revenue Act of 1921, Chapter 34, Public Laws of North Carolina of 1921.
Section 3 (Appendix, p. 62)----------55
Section 82 (6½) (Appendix, p. 68)------3, 6, 50, 54
Chapter 40, Public Laws of North Carolina of 1921, (Appendix, p. 66)----------3, 19, 20
Revaluation Act, Chapter 84, Public Laws of North Carolina of 1919.
Section 5----------23
Consolidated Statutes, Sec. 858----------42
Consolidated Statutes, Sec. 7979----------43

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922

No 381

SEABOARD AIR LINE RAILWAY COMPANY

Appellant.

against

A. D. WATTS, COMMISSIONER OF REVENUE OF NORTH CAROLINA, AND OTHERS

Appellees.

BRIEF OF APPELLANT.

STATEMENT OF THE CASE

This is an appeal by Seaboard Air Line Railway Company, from an order of the United States District Court for the Eastern District of North Carolina denying an application under Section 266 of the Judicial Code for an interlocutory injunction. The opinion of the three judges and the order will be found in the printed record at pages 95 and 98.

For the year 1919 the ad valorem assessment of the properties of complainant in the State of North Carolina was $20,191,720.00. In 1920 the State Tax Commission, under the Revaluation Act (Chapter 84, Public Laws of North Carolina, 1919) increased the assessment of said property for 1920 to $34, 768,440.00, and complainant paid its taxes thereon to the State Treasurer under written protest. In 1921 the Revenue Com-

missioner assessed said properties at $34,834,685.00. Complainant filed objections to the assessment, and a hearing was had before the Revenue Commissioner and facts adduced tending to show that said valuation was in excess of the true "actual value" of the property as the said term is defined in Section 28 (e) of the Machinery Act, reading in part as follows:

> "The words 'actual value,' as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold."

This hearing resulted in the Revenue Commissioner adhering to the assessment of complainant's property at $34,834,685.00. The complainant petitioned the Revenue Commissioner for a review of the assessment of its property by the State Board of Equalization. The Revenue Commissioner, under advice of the Attorney General, held that the complainant and other railroads had no appeal to the State Board of Equalization or any other body, but he reheard the matter himself and declined to change said assessment. However, on or about November 21st, 1921, the Commissioner of Revenue changed the assessment from $34,834,685.00 to $34,768,440.00.

Prior to the commencement of this action, the Commissioner of Revenue allocated to the counties, cities, towns and other local taxing districts their proportionate part of this valuation, under the provisions of Section 64 of the Machinery Act, (Appendix page 64) and the taxing authorities were preparing to collect taxes on the basis of the apportionments certified by the Commissioner of Revenue.

On December 1st, 1921, the Seaboard Air Line Railway Company filed its bill of complaint in the United States District Court for the Eastern District of North Carolina, making defendants thereto A. D. Watts, Commissioner of Revenue of

North Carolina, Benjamin R. Lacy, State Treasurer of North-Carolina, Baxter Durham, State Auditor of North Carolina, James S. Manning, Attorney General of North Carolina, and the tax officials in 26 counties, 63 cities and towns, 3 townships, and 3 special school tax districts, to enjoin the collection of taxes on the assessment which had bee ı certified by the Commissioner of Revenue.

The bill also sought to enjoin the collection by the State taxing authorities of a franchise or privilege tax of one-tenth of one per cent. on the valuation of $34,768,440.00, under the provisions of Section 82 (6½) of the Revenue Act of 1921 (Appendix page 68).

At the time of the increase in the assessment of complainant's property from $20,191,720.00 to $34, 768,440.00 by the State Tax Commission, there was a general revaluation of property for taxation in the State of North Carolina, and an effort had been made to tax all property at its true value and on an equal basis. This revaluation was made under the provisions of Chapter 84, Public Laws of North Carolina, 1919, known as the Revaluation Act. This act provided that all property real, personal and mixed should be valued according to its true value in money as of the first day of May, 1919, and that the valuation when completed should become the value for tax purposes for the years 1920, 1921, 1922 and 1923.

Acting under this statute, the property in every county in the State was revalued for the purposes of taxation and assessed according to its "true value in money" as of May 1st, 1919.

The Legislature of Nortth Carolina of 1921 enacted a statute (chapter 40, Public Laws of 1921, Appendix page 66), creating the office of Commissioner of Revenue and transferring the powers and duties of the State Tax Commission to such Commissioner of Revenue. After this enactment, the Commissioner of Revenue became the assessing officer for railroad property, and by this same act the powers and duties of the State Tax Commission as a board of equalization were transferred to a State Board of Equalization composed of the Commissioner of

Revenue, the Chairman of the State Corporation Commission and the Attorney General.

The Legislature of 1921, by the provisions of Section 28 (a) of the Machinery Act, (Appendix page 62) provided that the Board of County Commissioners and County Board of Appraisers and Review should meet jointly in each county in the State on the first Tuesday after the first Monday in April, 1921, as a County Board of Review, to determine if the value of real property, as fixed under the Revaluation Act in the county as a whole, was in excess of the fair value of such property at the time of the meeting of such board, and this board was given the power to find the average percentage of such excess in the county as a whole and to reduce the assessment of all the property in the county to the extent of such average percentage.

The reductions made in the assessment of real property in twenty of the twenty-six counties in which complainant operates its line of railroad for the year 1921, under the valuation and assessment of the year 1920, are as follows:

Anson	20% and 10% in towns
Bertie	25%
Bladen	15%
Chatham	25%
Cleveland	15%
Durham	25%
Franklin	40%
Gaston	25%
Granville	33 ⅓%
Halifax	40%
Lee	33 ⅓%
Lincoln	35%
Mecklenburg	25%
Northampton	33 ⅓%
Rutherford	10%
Union	25%

Vance	33 ⅓%
Warren	33 ⅓%
Robeson	40%
Scotland	1.1%

The County Boards of Review in the Counties of Brunswick, Columbus, Moore, New Hanover, Richmond and Wake, in which complainant also operates its line of railroad, made no reduction in the 1920 assessment.

The authority of the County Boards of Review to make a percentage reduction on the assessment of other property under Section 28 (a) of the Machinery Act of 1921, did not extend to the property of railroads, and, therefore, the complainant did not get the benefit of the percentage reduction made in the assessment of other property in the counties in which complainant operates its railroad lines.

The Machinery Act of 1921, Section 28 (g) (Appendix page _____) provided that any taxpayer owning property assessed originally by the State Tax Commission (this authority was subsequently transferred to the Commissioner of Revenue) might make application to the State Tax Commission for a review of the assessment of his property in the same manner provided for complaint by property owners before the County Boards, and the State Tax Commission (Commissioner of Revenue) was given authority to hear and determine complaints. The assessment of railroad property was made originally by the State Tax Commission and this made it necessary, under Section 28 (g) of the Machinery Act of 1921, for the complainant to apply to the Commissioner of Revenue for a review of its assessment. This application was made and at the hearing before the Commissioner of Revenue complainant contended that it should be given the benefit of the average percentage of reduction made in the assessment of property other than that of railroads in the several counties in which complainant operated its lines of railroad. The Commissioner of Revenue refused to give the complainant the benefit of this reduction and

refused to make any reduction in the assessment of complainant's property.

The complaint filed in this cause attacks the assessment of complainant's property upon the ground that the tax laws of North Carolina create an illegal discrimination against complainant, in that complainant's property is assessed at its true value or more than its true value as defined by such laws and other property is assessed at less than its true value, and upon the further ground that the tax laws of the State of North Carolina have been so administered as to result in the systematic valuation of property other than that of railroads at less than its true value, while the property of complainant and other railroads is assessed at its true value as defined by the tax laws of the State. It is alleged in the complaint and supported by affidavits that the conditions which were considered as having brought about the reduced value of other property applied with equal or greater force to the property of complainant and other railroads.

The complainant also attacks the fanchise tax of one-tenth of one per cent, on the assessed value as being unconstitutional and void. This tax is imposed by Section 82 (6½) of the Revenue Act of 1921 (Appendix, page 68).

The defendants filed answer on December 21st, 1921, denying that there was any discrimination in the assessment of complainant's property for taxation and asserting that it was assessed at its true value in 1920, and that there had been no reduction in such value in 1921, and denying that the franchise tax was void.

At the time of filing its bill, complainant made application for an interlocutory injunction under Section 266 of the Judicial Code and entered into a stipulation by which complainant agreed to pay its taxes on an assessment of $27,119, 384.00, and it was agreed, in consideration of such payment, that the defendants would not undertake to collect taxes on any greater valuation pending the hearing of complainant's application for a temporary injunction.

On January 24th, 1922, the application for an interlocutory injunction was heard by Circuit Judge Waddill and District Judges Boyd and Connor, and an order was entered March 19th, 1922, denying the interlocutory injunction, and from this order the complainant appealed to this Court.

On March 30th, 1922, complainant filed its petition for an appeal and for an order staying the proceedings pending appeal to the Supreme Court. The appeal was granted, but the stay of proceedings was denied and complainant thereafter filed a petition in the Supreme Court asking that the defendants be restrained from collecting taxes of complainant pending the decision of the appeal by the Supreme Court. This Court, on May 29th, 1922, denied the motion for a stay with leave to apply to the District Court, and application was made to the Three-Judge Court and the stay was granted in July, 1922.

SPECIFICATIONS OF ERROR

The appellant specifies as error in the judgment and opinion of the Court the following:

1. In decreeing that the interlocutory injunction be denied.

2. In holding that for the purpose of the motion for an interlocutory injunction only, complainant neither in its pleadings, nor upon the proof adduced, is entitled to have the interlocutory injunction applied for.

3. In failing to hold that the assessment of plaintiff's property for taxation is in excess of the true "actual value" of the said property as defined by the tax laws and as required by the Constitution of North Carolina, and is, therefore, invalid.

4. In failing to hold that the assessment of plaintiff's property for taxation is not made in accordance with the provisions of the Constitution and statutes of North Carolina, and that said assessment is invalid.

5. In failing to hold that the manner and method by which plaintiff's property was assessed is illegal and operates as an unjust and unlawful discrimination against plaintiff, in viola-

tion of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that thereby plaintiff is deprived of its property without due process of law and denied the equal protection of the law.

6. In failing to hold that the action of the Commissioner of Revenue, in declining to make a reduction in the value of plaintiff's property, commensurate with the horizontal reductions made by the taxing authorities under the North Carolina law permitting such reductions on other property generally, was unjust discrimination, contrary to the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment of the Constitution of the United States.

7. In failing to hold that the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States are violated, in that plaintiff's property is alleged by the State to be assessed at its true value for taxation, while the property of other taxpayers generally in the State is appraised and assessed for taxation at less than its true value in money and that this appraisal and assessment of the property of other citizens and taxpayers of the State has been long continued and is arrived at under a scheme of taxation which shows intent to place an undue burden of taxation upon plaintiff and its property.

8. In failing to hold that the scheme of taxation of the State of North Carolina and the assessment of the properties of the various classes of taxpayers is by settled purpose and intent so designed and carried out that, while the property of plaintiff is assessed at its true value in money, or more than its true value in money, the large proportion of the property in the State is assessed at less than its true value in money, thereby casting an undue and excessive burden upon plaintiff, in violation of the Uniformity Clause of the Constitution of the State of North Carolina and in violation of the Fourteenth Amendment to the Constitution of the United States.

9. In failing to hold that the ad valorem assessment being

in excess of true value for taxation, the so-called Franchise tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

10. In failing to hold that the so-called Franchise or Privilege tax is in truth and in fact an additional ad valorem or property tax upon plaintiff's property and is illegal and invalid because levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State, and the enforcement of such void statute deprives plaintiff of its property without due process of law, contrary to the Constitution of the United States.

11. In failing to hold that the so-called Franchise or Privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in inter and intrastate commerce, and is therefore a burden upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

12. In failing to hold that, if the Franchise or Privilege tax be imposed for the privilege of engaging in intrastate commerce, it is measured in part by the value of the privilege of engaging in interstate commerce, in that it is based upon the entire value, including values derived from use in interstate commerce, and is, therefore, a burden imposed upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

13. In failing to hold that the payment of the so-called Franchise or Privilege tax is exacted as a condition precedent to the right of plaintiff to do "any business" in the State, whether interstate or intrastate, and, therefore, unconstitutional and void.

14. In failing to hold that the assessment made is void, in that it includes in the value used as a basis for arrival at the Franchise or Privilege tax the value of property not used in the business for which the privilege is exacted, and such law and the enforcement thereof, in the manner set forth, violates the

Fourteenth Amendment to the Constitution of the United States.

15. In failing to hold that the tax system of the State of North Carolina, which includes an ad valorem tax on the full value of its property in the State, including as a part thereof value it has due to its use in interstate commerce, plus a franchise or privilege tax upon the full value of the said property for ad valorem purposes, plus an income tax of three per cent. on its net operating income, does, in practical operation, result in a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

16. In failing to hold that the so-called Franchise or Privilege tax is levied upon an erroneous assessment of plaintiff's property, in that the said property is assessed at its true value, or more than its true value, whereas, the property of individuals and other corporations is assessed at less than its true value, and plaintiff has been illegally denied deductions in valuation allowed other corporations and individuals.

17. In failing to hold that the so-called Franchise or Privilege tax is unconstitutional and void in that the Legislature of North Carolina has not levied a tax on property for the support of the State government, as required by Section 3, Article 5, of the Constitution of North Carolina, but has attempted to levy revenue for the support of the State government by franchise, income, inheritance and taxes of similar nature.

ARGUMENT

This is a suit in equity to enjoin:

1. The collection of taxes for the year 1921, levied by the counties, cities and towns of the State of North Carolina on the assessment of complainant's property made by the State Tax Commission for the year 1920 and approved by the Commissioner of Revenue for the year 1921, upon the ground that the said assessment is in contravention of the Constitution of

North Carolina and the Constitution of the United States, because:

(a) The statutes of North Carolina authorizing a horizontal reduction in the assessed value of property other than that of railroads with no provision for a horizontal reduction in the assessment of railroad property creates a system which results in the valuation of the property of complainant at its true value or more than its true value, as defined by the tax laws of the State of North Carolina, and the valuation of property other than that of railroads at less than its true value, thereby creating an illegal discrimination against complainant.

(b) The laws for the assessment of property for taxation in the State of North Carolina have been so administered as to result in the systematic valuation of property other than that of railroads at less than its true value, while the property of complainant and other railroads is valued at its true value or more than its true value as defined by the tax laws of North Carolina.

(c) The assessed value of property other than that of railroads was reduced by the county appraisers in sixty seven counties with the approval of the State Board of Equalization, whereas the Commissioner of Revenue, to whom complainant applied for reduction in its assessed value, refused to make any reduction, notwithstanding the conditions which were considered as having brought about the reduced value of other property applied with equal or greater force to the property of complainant.

2. The collection of a tax of one-tenth of one per cent on the assessed value of the property of complainant upon the ground that the said tax is in contravention of the Constitution of North Carolina and the Constitution of the United States, because:

(a) It is not a franchise tax, but an ad valorem tax and is not levied on other property.

(b) It is levied on an invalid assessment.

(c) It is a burden on interstate commerce.

(d) The legislature has not levied a tax on property for state purposes as required by section 3 of Article 5 of the Constitution of North Carolina, and a system of taxation which attempts to raise revenue for state purposes entirely from other sources is subversive of both the letter and spirit of Section 3 of Article 5 of the Constitution of North Carolina.

Upon reading the allegations of the bill of complaint which relate particularly to the assessment of complainant's property for taxation, it will be found that the bill contains averments which are entirely sufficient, when supported by affidavits as they are, to sustain the complainant's right to the relief prayed for. We call special attention to the averments of Section 7 and the concluding paragraph thereof as follows:

> "The complainant avers that the failure and refusal of the Commissioner of Revenue to grant the complainant a reduction in the assessment of its properties while the counties made a systematic reduction in the valuation of other real estate and property generally resulted in a discrimination against the complainant; and complainant avers that such discrimination is in contravention of Section 3 of Article 5 of the Constitution of North Carolina and likewise denies the complainant the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States." (Printed Record, page 16.)

I

PRINCIPLES GOVERNING ISSUANCE OF INTERLOCUTORY INJUNCTION

> "On a motion for an interlocutory injunction, the question is not what relief plaintiff may be able to prove itself entitled to after final hearing, but what relief it is then entitled to in order to make the anticipated relief effective."
>
> Nulomoline Co. v. Stromeyer, 240 F., 228.

"A temporary injunction may be issued to maintain the *status quo* pending a final hearing where the questions of law and fact are intricate and difficult and where the rights of all parties can be easily safeguarded if the injunction is wrongfully issued, while the injury to complainant would be irreparable if the injunction were wrongfully denied."

Joplin etc. Ry. Co. v. Public Service Commission of Missouri, 267 Fed., 584.

Granting of an interlocutory injunction rests in the sound discretion of the court, which may take into consideration the relative damage which the respective parties will sustain if it be granted or refused.

Kemmerer v. Midland Oil & Drilling Company, 229 Fed., 872.

In Kryptok Co. v. Stead Lens Co., 190 Fed., 767, Sanborn, Circuit Judge, says: "The grant of a preliminary injunction rests in the discretion of the trial Court, not in its arbitrary, whimsical will, but in its sound judicial discretion, informed and guided by the established principles, rules, and practice of equity jurisprudence."

In 14 Ruling Case Law, page 357, it is said:

"Established principles of equity jurisprudence are . . . (2) that where the injury to the applicant if the preliminary injunction is refused will probably be greater than the injury to the opponent if it is granted, it should be issued."

If complainant has made out a *prima facie* or probable right to the injunctive relief, temporary injunction should be granted.

Railroad & Telephone Companies v. Board of Equalizers, 85 Fed., 302.

"When a bill is presented asserting claims involving grave questions of law and disputed issues of fact, which the court must decide before rendering a final decree, it is

within the sound judicial discretion of the trial court to preserve the existing status until the case is finally decided, whenever that course is necessary to fully protect the plaintiff or to sustain the jurisdiction of the court. Especially is this true in cases where defendant can be fully protected against any loss by the court's requiring of plaintiff a proper and adequate bond."

Railroad Commission of Louisiana v. Texas & Pacific Ry. Co., 144 Fed., at p. 73.

"Where injury to the moving party will be immediate and great, while the loss to the opposing party will be comparatively small and susceptible of indemnification by bond, and the questions are grave, a temporary injunction will be granted."

Shubert v. Woodward, 167 Fed., 47.
Seaboard Air Line Ry. Co. v. R. R. Commission of Ala., 155 Fed., 792.
Cohen v. Delavina, 104 Fed., 946.

"All that is needed in a preliminary injunction is to satisfy that a cause of action exists and that irreparable injury will be done the complainants unless they are protected. In such a case a preliminary injunction ought to issue."

Ward, Circuit Judge, in Irving v. Carpenters & Joiners of America, 180 Fed., 896.

"The granting of a temporary injunction does not determine the rights of the parties. The court need be satisfied no further than of a probable right and a probable danger, and that such right may be defeated without the interposition of a restraining order, and that the granting of such order will probably be attended with less injury to the respondent than to the complainant."

Colorado Eastern R. Co. v. C. B. & Q. Ry. Co., 141 Fed., 898. (C. C. A.)

We submit that the verified bill and the affidavits filed by complainant showing the undervaluation of property other than that of railroads, and showing the depreciation in value of complainant's property, which have not been answered by the defendants, are sufficient to establish complainant's right to have the status quo maintained until the hearing on the merits.

As to the franchise tax, we submit that the facts before the court establish its invalidity and upon the record as it now stands complainant is entitled to a perpetual injunction.

In *Southern Ry. Co. v. N. C. Corporation Commission*, 99 Fed., 162, Circuit Judge Simonton was confronted with the same situation presented here and he disposed of it in the following language:

> "In the argument of the case in this court, four grounds were taken against the constitutionality of the action of the corporation commission: (1) It was denied that it had any power to levy the assessment complained of. (2) It was alleged that the method adopted for assessing the value of railroad property differs so materially from that provided for assessing other property in the State of North Carolina, as to deny the complainants the equal protection of the law. (3) That there has been in the State of North Carolina a systematic and intentional undervaluation of real and personal property, other than railroad property, with the design to discriminate against railroads, and to cast upon them an undue share of the burdens of taxation, for the purpose of relieving other property of its just proportion of state taxation. (4) That, there being this systematic and intentional undervaluation of real and personal property other than railroad property, the property of complainants has been valued higher than that of individuals.
>
> The first ground has been passed upon, and, in deference to the decisions of the Supreme Court of North Carolina, it is not sustained.
>
> The three other grounds present Federal questions, de-

pendent upon issues both of fact and of law. An examination of the affidavits filed leads to no satisfactory conclusion or to an inclination of opinion. They will be referred."

II

THE TAX LAWS OF NORTH CAROLINA BY NECESSARY CONSTRUCTION CREATE AN UNLAWFUL DISCRIMINATION IN THE ASSESSMENT OF THE COMPLAINANT'S PROPERTY FOR TAXATION.

In the report of the State Tax Commission to Governor Bickett of August 10th, 1920, this language is used in the opening paragraph:

> "In our recommendations to the regular session of the General Assembly in 1919, with respect to the regular quadrennial revaluation of property then impending, the only recommendation presented with the confidence of positive conviction was that the General Assembly should provide an absolute standard of value to be applied alike to all classes of property in all counties; that it should not be further left to the conjecture of each taxpayer, and each assessing officer in each county to determine with varying opinion the standard of value by which they should be taxed. After the most thorough consideration the opinion became general that there should be no further temporizing with the troublesome question, and the act which became Chapter 84 of the Public Laws of 1919, known as the Revaluation Act, and establishing a 100 per cent basis of value, was enacted by the unanimous vote of the General Assembly.
>
> The general supervision and enforcement of this law was entrusted to the State Tax Commission. We have the honor to report the successful completion of this work, and present herewith the tabulated results with the hope and confidence that after it has been subjected to careful

analysis it may meet approval with the same unanimity with which the work was instructed to be done." (Printed Record, p. 76.)

In the report from which this quotation is made the eminent justice and fairness of revaluation to the taxpayers of North Carolina of every kind and character is set out at great length and in minute detail, and it appears that, for the first time in the history of the state, equality in taxation had been translated from a dream into a reality. The complainant in this case rejoiced with the Tax Commission in this wonderful accomplishment, and accepted without complaint other than a formal protest the increase in the value of its property from $20,191,720.00 to $34,768,440.00. It is true that this did not represent as great an increase in value as the average increase in other property. This is explained by the Tax Commission in its report to the Governor in these words:

> "The new assessment of railroads does not represent as great an increase as the average increase of other property, for the reason that they were assessed relatively higher than other property before, but we anticipate that it will meet the fair demands of public opinion when it is known that they are assessed like other property at their full value, and upon a valuation quite as high as that upon which they are asking to be permitted to earn a return." (Printed Record, p. 82.)

There is an apparent fallacy in the argument of counsel for defendants (See answer, Sec. 7, Printed Record, p. 39) that because other property was increased in many instances as much as 300 per cent and the property of railroads only 100 per cent, that therefore no discrimination can result from a reduction in other values. This situation results from the fact that for years the property of the railroads has been assessed at a much higher percentage of its true value than other property. It is stated in the answer, (Printed Record, p. 42), that in the year 1919 real estate in the twenty-six counties

in which the Seaboard operates its line of railroad was assessed for taxation at $131,359,584.00, whereas the true value of such real estate as fixed by the appraisers under the Revaluation Act as of May 1, 1919, was $511,121,682.00, showing a ratio of assessed to true value of 25.9 per cent, and the property of the Seaboard was assessed in 1919 at $20,191,720.00, and under the Revaluation Act it was assessed as of May 1, 1919, at $34,768,440.00, showing a ratio of 58 per cent. It, therefore, required an increase of more than 300 per cent in the value of the real estate and less than 100 per cent in the value of the Seaboard's property to place the assessed values on a basis of equality. It is manifestly illogical to say that no discrimination can result from a decrease in the assessed value of other property, without a corresponding decrease in the property of complainant.

The satisfaction with the new-born equality in the distribution of the burden of taxation was short lived. It appeared that the railroads paid less taxes in 1920 than they paid in 1919, thereby deriving a measure of recompense for the long years of inequality in the burden of taxation to which they had been subjected. This unexpected development of the Revaluation Act has been met by a most ingenious system. The Legislature of 1921 passed an act (Public Laws of 1921, Ch. 38,) authorizing a horizontal reduction in the assessed value of all real estate in the State of North Carolina and providing the machinery for doing so. Among other things this statute provides that:

> "The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen, (any vacancy which may have occurred to be filled by appointments of the board of county commissioners), shall meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of

real property as heretofore appraised and assessed in the county as a whole is in excess of the fair value of such property at the time of meeting of such board. The chairman of the board of county commissioners shall be the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be secretary of the said board. The said board shall make proper inquiry and investigation into the existing values of real property as compared with the assessed and appraised value thereof in the several cities, towns and townships of the county, and if it shall find that the assessed value of such property is in excess of the actual value, it shall find the average precentage of such excess in the county as a whole, or in the several cities, towns and townships, and shall report its findings so made to the State Tax Commission not later than the twentieth day of April, one thousand nine hundred and twenty-one. The values so reported shall be the values at which the property shall be assessed for taxation unless and until the same have been changed and revised by the State Tax Commission and certified to the board of county commissioners of such county, which shall be done not later than the first day of July, one thousand nine hundred and twenty-one." (Sec. 28, (a). Ch. 38, Public Laws of 1921, Appendix, page 62).

This section admittedly has no application to the property of railroad companies and such companies in the event of dissatisfaction with their assessment were required to make application to the Commissioner of Revenue, exercising the authority conferred upon him as successor to the State Tax Commission by Chapter 40, Public Laws of 1921, (appendix, page 66) for a review of the assessment of their property in the same manner as provided in the Machinery Act for complaint by the property owners before the County Boards. (Section 28-g of Machinery Act, Chap. 38, Public Laws, 1921 appendix page

64). There is this material difference in the machinery applicable to the property of railroads and that applicable to real property of other classes of owners:

The County Boards of Review, upon such inquiry and investigation as they desired to make, were authorized by Section 28-a to find the average percentage of assessed value over true value of real property in the county as a whole and to make a horizontal reduction in the assessed values commensurate with their finding. The railroads were required by Section 28-g to establish that the assessed value of their property individually exceeded its true value.

Acting under the provisions of Section 28-a of the Machinery Act, (appendix, page 62) sixty seven counties in the State of North Carolina made horizontal reductions in the assessed value of real estate, varying from 10 per cent to 50 per cent. The reductions in the counties in which the Seaboard operates its lines of railroad are set out in the affidavit of W. L. Stanley and they show an average reduction of 20.73 per cent. (Printed Record, page 57).

Upon application by the complainant to the Commissioner of Revenue for a review of the assessment of its property under Section 28-g (Appendix, page 64) and Section 65 (Appendix, page 65) of the Machinery Act of 1921, and after hearing held on August 16, 1921, the Commissioner of Revenue refused to reduce the assessment of the complainant's property, and upon considering the question of an appeal from such action to the Board of Equalization, complainant found that the statute made no provision for such appeal by a railroad company. It will appear by examination of Section 28-g of the Machinery Act, (Appendix, page 64) and preceding sections and Chapter 40 of the Public Laws of 1921, (Appendix, page 66) that other taxpayers are given the right to appeal to the State Board of Equalization, consisting of the Chairman of the Corporation Commission, the Attorney General and the Commissioner of Revenue, which board is charged with the duty of

supervising the tax levies in the State for the purpose of seeing that property is fairly and equally valued. (Section 28-e of the Machinery Act, appendix, page 63).

The railroad companies were denied the right to have the Board of Equalization pass upon their assessments, and were denied the right to have the action of the Commissioner of Revenue in refusing to reduce their assessments passed upon by any reviewing or equalization board.

In authorizing a horizontal reduction in the assessed value of other property, which could not possibly be based upon the true value of each individual piece of property, and in requiring the railroads to show the decreased value of their property, and in denying the railroads the right to have their assessments equalized with other property by the Board of Equlaziation, the tax laws of North Carolina create a system which of necessity produces a discrimination against railroads, results in a lack of uniformity in taxation guaranteed by Section 3 of Article 5 of the Constitution of North Carolina, and violates the Fourteenth Amendment of the Constitution of the United States.

III

THE TAX LAWS OF NORTH CAROLINA AS ADMINISTERED CREATE AN UNLAWFUL DISCRIMINATION AGAINST COMPLAINANT IN THAT THEY DENY COMPLAINANT EQUALITY AND UNIFORMITY IN THE TAXATION OF ITS PROPERTY.

> "A tax law, as it leaves the legislative hands, may not be obnoxious to any challenge; and yet the officers charged with the administration of that valid tax law may so act under it, in the matter of assessment or collection, as to work an illegal trespass upon the rights of the individual. They may go beyond the powers thereby conferred and when they do so the fact that they are assuming to act

under a valid law will not oust the courts of jurisdiction to restrain their excessive and illegal acts."

Reagan v. Farmers' Loan and Trust Co., 154 U. S., 362.
Raymond v. Chicago Union Traction Co., 207 U. S., 20.

Sixty-seven counties in the State of North Carolina made horizontal reductions in the assessed value of property other than that of railroads varying from 10 per cent to 50 per cent. These reductions applied to every tract of land in the counties without regard to the true value of the land. The tax authorities met, declared that there had been a deflation in the value of land generally throughout the county, and authorized the reduction in the assessment of all real property in the county except that of railroads. Under the revaluation act the true value of this property had been arrived at by taking each individual tract, both within and beyond the borders of incorporated towns, and determining, after an examination of the various factors entering into its value, the true value thereof. We submit that it is perfectly apparent that all the property in a county could not depreciate in a common ratio. City property and county property differ widely in their use and the effect of economic conditions could not be uniform in its application to these properties, and yet in only a few counties was any distinction made in the percentage reduction in the value of city and country property.

In only one of the twenty six counties traversed by the Seaboard was the reduction in the value of town property less than that of country property. Farms, small and large, farm land improved and unimproved, city lots with and without residences, business lots with and without buildings, industrial plants and lands devoted to every character of use were thrown into a common pot and declared to have lost value in exactly the same proportion. The necessary result of this procedure was to reduce the value of property in a large percentage of cases to a figure below the true value and thereby create a discrimination against property assessed at its true value. The

reductions made in the various counties were in every instance approved by the Board of Equalization.

The illogical situation developed by this procedure is demonstrated by the fact that values in Wake County were not reduced while the reductions in the adjoining counties wherein complainant operates its line of railroad and in which the lands differ in no respect from those of Wake County, were as follows: Franklin 40 per cent, Chatham 25 per cent, Durham 25 per cent and Granville 33 1-3 per cent. We submit that no economic condition could so variously affect the values of property under such similar conditions as exist in these counties.

It is said in support of the action of the counties in making horizontal reductions that land had been assessed in 1919 at the flood tide of prices and under unusual conditions. If the high prices were adopted and if the appraisers were influenced by the unusual conditions, it was in direct opposition to the provisions of the Revaluation Act (Public Laws, 1919, Chap. 84), section 5 of which is as follows:

> "In estimating the depreciation of any building, structure, machinery, or other class of property subject to depreciation, the appraisers shall also take into consideration any appreciation by reason of surroundings, increased cost of material and labor, and any other factors which would tend to increase or decrease the value of any such property. In considering the increased cost of material and labor these factors shall be considered upon the basis of such increase as may be deemed to be normal, or stable, and not such temporary increase as obtained during, or immediately on account of, war conditions, and in estimating the real value of land, it shall be with reference to the normal or stable value and not with reference to the temporarily inflated values, but in all cases the appraiser shall determine what is the actual fair market value of the property."

It was certainly the opinion of the State Tax Commission

that the appraisers followed the statute and placed a conservative value on property in making the revaluation. In the report of the commission to Governor Bickett, it is said:

> "There has been some criticism that 'inflated' values have been adopted as the basis of tax values. It is undoubtedly true that we have moved on to a new price level of all commodities since 1915 when real property was last valued. Nevertheless we believe that a careful analysis of the values reported will disclose that there has been a conservative compliance with the provision of the Revaluation Act, that such values should be used as were 'deemed to be stable.'" (Printed Record, page 80.)

Conceding that the reduction in value of other property was justified by economic conditions, was not the property of this complainant and other railroads subject to the same economic law and did not its value similarly decrease from May 1st 1920, to May 1st, 1921?

W. L. Stanley states in his affidavit, (Printed Record, page 58), that the various items of material and equipment necessary in reproducing a railroad decreased in value between May 1st, 1920, and May 1st, 1921, from 21 per cent to 70 per cent, and that the cost of labor which would have been employed in the construction of railway lines decreased 27 per cent between these dates. It is also stated in this affidavit that "the naked value of land for railroad purposes is directly dependent upon the market value of adjacent land and is affected by the same economic conditions. Consequently if such adjacent land has depreciated in value, there must be a corresponding decrease in the value of railroad land."

The facts which sustain the contention of the Seaboard that it is entitled to the same, if not a greater, reduction in its assessed value than other property are set forth in the affidavit of W. L. Stanley, (Printed Record, pages 58, 59 and 60) as follows:

> "The net operating income of the Seaboard Air Line

Railway Company in North Carolina for the calendar year 1918, immediately preceding the assessment of its property as of May 1st, 1919 was $3,112,693.46; for the year 1919, it was $2,412,076.65; for the year 1920, it was $2,534,305.84; for the period of January 1st to April 30th, 1921, it was $704,965.86, or equated upon an annual basis $2,114,897.58. It will, therefore, be observed that the net operating income of the Seaboard in North Carolina has, as compared to the year 1918, decreased by the following percentages:

1919 - 22.5 per cent.
1920 - 18.5 per cent.
1921 - 32.0 per cent. (based upon the first four months thereof.)

As compared to the year 1918, immediately preceding the date of the revaluation of the property of the Seaboard Air Line Railway Company in North Carolina, the net operating income of said railway as a system has decreased as follows:

1919 - 48.9 per cent.
1920 - 123.0 per cent.
1921 - 16.8 per cent. (based upon the first four months thereof.)

"The curtailment in the production of agricultural products and reduction in the output of factories in North Carolina during the year 1921, as compared to the year 1920, which resulted in a deflation of the value of land devoted to agricultural pursuits, as well as a deflation in the value of manufacturing enterprises, and their outputs have materially affected the volume of business handled by this railroad in the State of North Carolina. This is demonstrated by the fact, that for the first four months of the year 1920, it transported to all stations in North Carolina, 1,022,143 tons of freight, both interstate and intrastate; while for the corresponding months of 1921, it transported to such stations, only 692,016 tons of such

freight, or a decrease of 32.3 per cent; during the period, January 1st to April 30th, 1920 said railway forwarded from all stations in North Carolina 962,770 tons of freight, both interstate and intrastate, while for the same period of 1921 it forwarded from such stations 639,699 tons of freight or a decrease of 33.6 per cent; for the first four months of 1920, the Seaboard Air Line Railway Company handled from all stations in North Carolina, 471, 251 passengers, both interstate and intrastate, while for the same period of 1921, it handled from such station only 421,155 passengers, or a decrease of 10.6 per cent; for months subsequent to April 1921, as compared to the same months of the previous year, the decrease has been materially larger, running from 29 per cent in May to 40 per cent in August.

"The number of loaded cars moved over the entire Seaboard System the first six months of 1920 was 927,208 and for the same period of 1921, 686,739, a decrease of 240,469 or 25.93 per cent. The number of loaded-cars moved over the Virginia and North Carolina Divisions, the mileage of which is almost entirely within the State of North Carolina, for the first six months of 1920 was 353,306 and for the same period of the year 1921, 245,901, a decrease of 107,405 or 30.4 per cent.

"When the assessment of the Seaboard Air Line Railway Company's property in North Carolina was made as of May 1st, 1919, and prior thereto, its expenses of operation were materially less than they have been since that date. It therefore follows that the sum of money available for the payment of taxes, interest and finally representing net income was materially greater prior to May 1st, 1919, than it has been subsequent to that date. This is shown by the following statement of the amount of each dollar of gross earnings in North Carolina for the year indicated required to pay operating expenses exclusive of taxes, in that state:

1916 - $ .5549
1917 - .6053
1918 - .6937
1919 - .7570
1920 - .7944
1921 - .7995 (First four months thereof.)

"The business done by the Seaboard Air Line Railway Company in North Carolina is largely interstate, consisting principally of freight that is loaded and discharged in other states, and simply passing through the State of North Carolina in transit. During the years 1919, 1920 and for the first four months of 1921, approximately three-fourths of the total North Carolina earnings were interstate.

"While it is true that the net operating income of said railway in North Carolina by virtue of the foregoing is proportionately larger than in any other state, it is necessary to apply a large percentage of North Carolina's net earnings to the expenses of the operation of the system as a whole and to the reduction of the deficit existing between gross earnings and operating expenses in other states on business originating in or destined to such states and passing through North Carolina."

In another way there has been an illegal discrimination against complainant. Its property is admitted to be assessed at its true value within the meaning of the tax laws of North Carolina. (Printed Record, page 37, at bottom of page). It is demonstrated by the affidavit of C. J. O'Brien, (Printed Record, page 66), based upon affidavits from each of the counties in the State, except Dare and Green Counties, that real property other than that of railroads is now assessed at a figure much less than its true value. The affidavits filed by complainant show that every transfer of land between January 1st, 1921, and June 30th, 1921, in 98 of the 100 counties in the State on record in the offices of the Registers of Deeds, where the consideration was more than $1,000.00, has been examined and

the consideration tabulated and the tax books have been examined and the assessed values tabulated, and the result shows the following totals: Consideration $30,608,475.24; Assessed Value $20,383,684.57. The ratio of assessed to sale value is 66.58 per cent. The fact that every deed has been examined over a period of six months and the result tabulated, without any method of selection, distinguishes this case from those in which only a few isolated instances of undervaluation were shown.

The affidavit of George M. Phifer, (Printed Record, page 64), showing the sale value and assessed of property in Mecklenburg County is typical of the affidavits of other counties. It appears from this affidavit that property of the assessed value of $1,815,279.50 was transferred by deeds showing a total consideration of $3,169,115.25, a ratio of 57.28 per cent.

That the amount of consideration in recent sales is an important element in determining the true value of the land will appear from the affidavit of the former State Tax Commission under the supervision of which the revaluation act was made effective. (Printed Record, page71.) This affidavit was filed by defendants.

This undervaluation, of which complaint is made, is sytematic because it is made under a statute which creates a system and because it is the result of a horizontal reduction in the value of all real property, except that of railroads. It is intentional because it is the logical result of the method adopted in reducing values. It is illegal because it creates an arbitrary and oppressive discrimination against complainant and other railroads.

IV

THE COLLECTION OF TAXES BASED UPON AN ASSESSMENT WHICH DENIES A TAXPAYER EQUALITY AND UNIFORMITY IN TAXATION WILL BE ENJOINED.

The Constitution of North Carolina provides that:

"Laws shall be passed, taxing by a uniform rule, all

moneys, credits, investments in bonds, stocks, joint stock companies or otherwise; and also all real and personal property, according to its true value in money." Article 5, Sec. 3.

"All taxes levied by any county, city, town or township, shall be uniform and ad valorem and upon all property in the same except property exempted by this Article." Article 7, Sec. 9.

In Cummings v. Bank, 101 U. S., 153, it is said:

"Uniformity in taxing implies equality in the burden of taxation and this equality of burden cannot exist without equality in the mode of assessment as well."

Is there equality in the mode of assessment of complainant's property and that of other taxpayers in the State of North Carolina? Manifestly there is not, and it is of this inequality that complaint is made, and we submit that the facts fully sustain our position that this case presents an "extreme inequality in taxation of which the Federal Courts should lay hold."

Dane v. Jackson, 41 Sup. Ct., Reporter 566.

The provisions of the tax laws and the universal undervaluation of other property and the admitted assessment of the property of complainant at its true value as defined by the tax laws of North Carolina are sufficient to meet the requirements of every decision of the United States Supreme Court in which the question of discrimination by inequality of assessment has been presented. The expressions by which the rule is stated in these cases must be considered in connection with the facts, and, when so considered, it will, we confidently submit, be found that there is no decision of this court which will sustain the denial of relief to complainant upon the facts of this case.

In one of the first cases to come before the Supreme Court involving this question, the principle upon which a court of

equity will grant relief from a discrimination in assessment of property for taxation is fully stated as follows:

> "When a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when the rule is applied not solely to one individual but to a large class of individuals or corporations, equity may properly interfere to restrain the operation of this unconstitutional exercise of power."
>
> Cummings v. Bank, 101 U. S., 153, quoted with approval in Raymond v. Trust Co., 207 U. S., 20; Greene v. L. & I. R. R. Co., 244 U. S., 499.

We do not find that the effect of the provisions of the Consitution of North Carolina, quoted above, upon a discrimination in assessment for taxation has been determined by the Supreme Court of North Carollina. Similar provisions will be found in the constitutions of other states in which it has been held that railroad property cannot be assessed at a higher percentage of its value than other property.

> Ex parte Bridge Co., 62 Ark., 461;
> C. B. & Q. R. Co. v. Board of Equalizers, 67 Fed., 411;
> Trustees of Railroad v. Guenther, 19 Fed., 395.

In *Porter v. Langley, (Texas)* 155 S. W., 1043, the evidence showed that the value of land in Hill County was from $90. to $125. an acre and was assessed at $40. per acre and bank stock assessed at 100 per cent of its value, and the court held the assessment of the bank stock to be a clear discrimination against the owners of bank stock and to deny to them the right of equal and uniform taxation secured by the constitution of the state.

When the constitution of the state requires uniformity and equality in taxation, such principles cannot be denied a large class of citizens of the State without violating the provisions

of the Fourteenth Amendment, and whether the denial is the result of the state law itself or its administration, the result is the same.

County of San Mateo v. Railroad, 13 Fed., 722;
County of Santa Clara v. Railroad, 18 Fed., 835.

It has been frequently held by the United States Supreme Court that the protection of the Fourteenth Amendment can be invoked where unequal taxation is the result of the administration of a good law as well as when it results from the operation of a bad law.

Reagan v. Far. L. & T. Co., 154 U. S., 362;
Cummings v. Nat. Bank, 101 U. S., 143;
Pelton v. Nat. Bank, 101 U. S., 143;
Dundee M. & T. Co. v. School Dist. 21 Fed., Rep., 151.

In *C. M. & St. P. Ry. Co. v. Kendall et al.*, 278 Federal, 298, it was recently held:

"Code Iowa 1897, Sec. 1336, and Code Supp. Iowa 1913, Sec. 1305, requiring all property, with certain exceptions, to be valued for taxation at its actual value prohibits inequality of treatment, and intentional, deliberate assessment of different classes of property at different percentages of the actual value constitutes unlawful discrimination, forbidden by the law, and hence by the federal Constitution.

As the intentional deliberate assessment of different classes of property at different percentages of actual value contrary to Code Iowa 1897 Sec. 1336 and Code Supp. Iowa 1913, S. 1305, is contrary to the national Constitution, it may be enjoined by a federal court."

The case of *Raymond v. Chicago Union Traction Co.*, 207 U. S., 20, seems to us to establish the right of complainant to relief in this case. It is there held that:

"Assessing the franchises and other property of certain

corporations at a different rate and by a different method from that employed for other corporations of the same class for the same year, which results in enormous disparity and discrimination, denies the due process of law and equal protection of the laws protected by United States Constitution, 14th Amendment, against impairment by the State."

While in the case from which we quote, a different method for the assessment of the property of corporations of the same class was found to exist, the discrimination between corporations of the same class is not made an essential fact in establishing a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment. This is made plain by the case of *Nashville, etc., R. Co. v. Taylor*, 86 Fed., 168, and the following quotation from *Louisville Trust Co. v. Stone*, 107 Fed., 305, which appears in the opinion of Mr. Justice Peckham:

> "It may be conceded that, if the allegations of the bill are made out, there exists, in respect to the property of complainant and others similarly situated, a systematic, intentional, and illegal undervaluation of other property by the taxing officers of the state, which necessarily effects an unjust discrimination against the property of which the plaintiff is the owner, and a bill in equity will lie to restrain such illegal discrimination, and that in such cases Federal jurisdiction will arise because of the equal protection of the laws guaranteed by the 14th Amendment."

In the Taylor case, (86 Fed., 168) cited by Mr. Justice Peckham in *Raymond v. Chicago Union Traction Co., supra*, it is held:

> "While it may be true that the proposition that a tax statute, or a tax laid under a statute, is in violation of the constitution of the state, is not of itself sufficient to

constitute a violation of the Fourteenth Amendment, yet when, in addition, the statute results in an *arbitrary and oppressive discrimination in regard to a large class of citizens, or a large species of property, it is such class legislation, and such denial of the equal protection of the laws, as renders it obnoxious to the Fourteenth Amendment.*" (Italics added)

The complainant in the Taylor case brought suit to enjoin certification by the State Board of Equalizers of Tennessee of assessed value of complainant's property upon the ground that under the laws applicable to railroad and telephone property it had been deprived of the constitutional right of equalization provided for and allowed in respect to all other property in the state subject to taxation, and in consequence its property had been assessed at 25 to 40 per cent more in proportion to value than other classes of property. The question of jurisdiction of the Federal Court upon this state of facts is elaborately discussed by District Judge Clark and the jurisdiction upheld. Judge Clark meets the objection that the Fourteenth Amendment is directed solely against state action and therefore not applicable to the facts presented in this language:

"It was said in the discussion at the bar that the prohibitions of the Fourteenth Amendment are directed against state action only, and the correctness of this proposition is fully conceded, but a too limited definition and a too narrow view of what constitutes state action must not be entertained. State action to which the prohibitions of the Fourteenth Amendment extend is not limited to a legislative enactment as it comes from the hands of the Legislature, but extends to all instrumentalities and agencies officially employed in the execution of the law down to the point where the personal and property rights of the citizen are touched." (86 Fed., at page 183).

This case was taken by appeal to the Circuit Court of Appeals, Sixth Circuit, and heard by Circuit Judges Taft and

Lurton and District Judge Severens. (88 Fed., 350). The order of the District Court in granting the injunction was affirmed in an opinion by Circuit Judge Taft. After the decision of the Circuit Court of Appeals, the defendant applied to the United States Supreme Court for a writ of certiorari and the motion was denied. (172 U. S., 647).

In *National Bank v. Kimball*, 103 U. S., 732, 735, Mr. Justice Miller, referring to the rule that equity will not interfere with an excessive assessment, says:

> "An apparent exception to the universalty of the rule is admitted in *People v. Weaver*, 100 U. S., 539, *Pelton v National Bank*, 101 U. S., 143 and *Cummings v. National Bank*, 101 U. S., 153. It is held in these cases that when the inquality in valuation is *the result of a statute of the state designed to discriminate injuriously* against any class of persons or any species of property, a court of equity will give appropriate relief; and also where, though the law itself is unobjectionable, the officers who are appointed to make assessments *combine together and establish a rule or principle of valuation*, the necessary result of which is to tax one species of property higher than others, higher than the average rate, the court will also give relief." (Italics added)

Independently of the statute, when a system of valuation is adopted by assessors which is designed to operate *unequally*, and does operate unequally when applied not solely to an individual, but to a large class of individuals, or corporations, the case is a proper one for a court of equity to correct.

> Cummings v. National Bank, 101 U. S., 153;
> Stanley v. Supervisors, 121 U. S., 535;
> Pelton v. National Bank, 100 U. S., 143;
> Boyer v. Boyer, 113 U. S., 689.

In *Trustees v. Guenther*, 19 Fed., 395, it appeared that the court took judicial notice of the fact that property in

general in the State of Tennessee was assessed at about seventy-five percent of its value. The railroad's property was assesed at more than its value. It also appeared that the assessors intended to assess lands below their value and to assess railroads at their full value. In holding that "intentional inequality" entitled the plaintiff to relief, Judge Key says:

> "Mere inequalities in taxation will not vitiate a tax if they be accidental and unitentional. * * * * There will, of necessity be many instances in which property will be assessed at more than its value, and more, perhaps, in which it will be assessed at less than its value. These errors and discrepancies will not vitiate the tax; they are inevitable. But a different result follows should a standard of valuation be used for one species of property, which is different from that used for another, if the end reached necessarily is the taxation of the one species higher than the other." (p. 398).

The court valued the property, and assessed it at an amount considered to be fair, "as compared with the rate at which other property was valued for taxation," and enjoined the collection of the excess.

In *Dundee Mortgage Trust Co. v. Parrish*, 24 Fed., 197, it was contended that it did not appear that the low assessment of property in general was designedly made or made by preconcert. Answering this contention the Court says:

> "It is not necessary that there should be any actual conspiracy, or expressed design, to disregard the law in this respect, on the part of the assessor, to render the assessment illegal. Whenever the assessor of a district or a county, as large as one of these counties, uniformly estimates real property at only one-third of the value he places on mortgages, it is impossible to attribute the result to the infirmity of human judgment, and the only conclusion possible in the premises is, that it was de-

liberately and wilfully done in pursuance of a settled purpose or rule on his part; and where the same thing occurs in a number of counties in various parts of the State, it is manifest that the action of the assessors is not only wilful and deliberate, but that it is the result of a general and well understood custom to substitute this conventional value of real property for the 'true cash' one which the statute requires."

In *Taylor v. Louisville & Nashville R. Co.*, 88 Fed., 350: it is held:

"Equity will not enjoin an assessment of property at its full value, on the ground of inequality resulting from the assessment of other property at less than its full value, unless it appears that the assessing officers, whose acts of undervaluation create the unjust burden intentionally and habitually violate the law by assessing property at less than its true value; *but it need not affirmatively appear that they did so with intent to injure complainant and his class of taxpayers.*" (Italics aded).

In *Bureau County v. C. B. & Q. R. Co.*, 44 Ill., 229, it is held:

"When the property belonging to individuals in a county has been assessed at less than its actual value, the constitutional rule of uniformity forbids that the property of a railroad, in such county, should be assessed upon any greater percent of its value than that of individuals."

The text books are in accord with the cases cited herein:

"Injunction may issue where it is shown that there was an illegal discrimination against particular classes of property, in making the valuation, resulting from the intentional and systematic adoption of a rule or principle of valuation contrary to the constitutional or statutory requirement of equality and uniformity."

37 Cyc., 1264, citing cases from the United States Supreme Court and from the courts of Kansas, Oregon, Pennsylvania, Washington and Wisconsin.

> "While excessive assessments should be corrected by the course provided by law for such correction, yet where over-valuation has arisen from the adoption of a rule of appraisement which conflicts with a constitutional or statutory provision, a party may have a preventive remedy by resorting to equity to enjoin the collection of the excess upon payment or tender of the amount due upon a just valuation."
>
> Spelling on Extraordinary Remedies, Sec. 649;
> Elliott on Railroads, (2nd Ed.) Sec. 751 b.

Many of the questions presented in this case arose in a case decided in the Fourth Circuit, *Southern Railway Company, and others, v. North Carolina Corporation Commission,* 104 Fed., 700, and for convenient reference we will quote a large part of the opinion of Simonton, Circuit Judge:

> "The standing master has submitted to the court certain questions which have arisen in the course of his examination. The complainants, in their testimony in chief, produced evidence as to the taxes assessed on property in the county of New Hanover for the year 1898, having up for this purpose the register of deeds. In the course of this examination they sought to prove the true value of the property of certain corporations, probably for the purpose of comparison with the assessed value for taxation of these corporations. To this end they issued subpoenas duces tecum, and required the production of the books of such corporations, and their examination. Two questions arise: First, as to the competency and relevancy of an examination into the assessment for taxation of various parcels of property. Second, as to the right of complainants to demand the production of the books of these private corporations, and the

examination of them. The discussion and decision of this last question has been postponed at the request of counsel on both sides.

As to the first question: Counsel for defendants earnestly protest against the method of examination. They say, if separate items of property are examined in order to discover if the assessment of each is or is not its true value in money, the examination will be protracted in infinitum. The complainants allege that there is an established rule in North Carolina whereby all real and personal property other than railroad property is assessed for taxation below its actual value in money, and so the action of the corporation commission in assessing railroad property at its actual value in money creates a discrimination which is unlawful. If this alleged rule existed in resolution of the various boards of assessors, or in any compact between them, oral or written, or in any statutory enactment, the proper mode of proving it would be by evidence directly showing the existence of such rule. *If, however, the existence of the rule cannot be shown in this way, but is a matter of inference from a uniform course of conduct, then the only mode of proof is by showing a sufficient number of instances from which such a course of conduct could be inferred.* In the one case the conclusion would be reached *a priori;* in the other *a posteriori.* In the one case we would go from the general to the particular; in the other from the particular to the general. If, therefore, the complainants cannot establish the existence of the rule except by inference, it is lawful for them to introduce evidence as to the particular instances from which they seek to establish the general rule. During the examination the defendants propounded questions tending to show the value of the roadbed and other property of the corporations complaining of the action of the corporation commission. Complainants object

to this line of examination on the ground that the matter is not in this issue. The constitution of the State of North Carolina and the acts of assembly passed under the authority thereof require all real and personal property in the state to be assessed for taxation at its actual value in money. The corporation commission, which is intrusted with the assessment of railroad property for taxation, assessed the property of the several complainants at a certain sum each. The complainants thereupon come into this court, alleging that the method adopted with regard to them differs materially from the method adopted with regard to all other real and personal property in the state, so that they are exposed to unjust discrimination. On that allegation they ask an injunction. On the truth of that allegation depends the action of this court. It cannot assess the value of property, nor perform any of the functions of the assessor. It cannot pass upon the assessment, and say whether or not it be excessive, or whether it be illegal, irregularly imposed, or unjust. *Railroad Tax Cases,* 92 U. S., 575. There must be some ground for the interference of a court of equity And its interference cannot go to the reassessment of the property, but to the removal of the unlawful action. In the present case we must assume that the commission did its duty and fulfilled the constitutional and statutory requirement in assessing the railroad property. The amount of the assessment this court cannot question. *The sole question is, does there exist in North Carolina a rule or practice universal enough to presume the existence of a rule whereby all real and personal property other than railroad property is assessed below its value for taxation?* The burden of showing this in on complainants. Until this burden is removed, the inquiry must be directed to it. If it be removed, then it may possibly be competent for the defendants to show that, if such a rule or practice does

exist, it is applied also to the railroad companies, and as to them there is no discrimination. The standing master will conduct the examination in accordance with these rulings." (Italics added).

If the complainant has been denied equality and uniformity in the assessment of its property for taxation, as we contend, then there can be no doubt about the jurisdiction of an equity court to grant relief since the decision of the United States Supreme Court in *L. & N. R. R. Co. v. Greene*, 244 U. S., 522.

We recognize that if it should be assumed that the assessment in this case is invalid, equity will not restrain the collection of taxes unless there is some other ground to support the equity jurisdiction.

Raymond v. Chicago Union Traction Co., 207 U. S., 20 and cases cited at page 39.

We, therefore, submit that the interposition of equity is fully justified upon the following grounds:

First: The assessment creates a cloud upon complainant's title.

Second: Complainant has no adequate remedy at law.

Third: If the taxes are paid to the state, county, municipal and other officers, it will lead to a multiplicity of suits.

Fourth: Complainant will suffer irreparable injury.

Either of these grounds, together with the invalidity of the assessment, will support the equity jurisdiction.

Insurance Co. v. Bailey, 13 Wall., 616, 623;
Spelling on Extraordinary Remedies, Sec. 642.

I. THE ASSESSMENT CASTS A CLOUD UPON COMPLAINANT'S TITLE.

By the Machinery Act of 1921, (Sec. 98 of Chap. 38 Public Laws of 1921, appendix page 66) the taxes upon all property of the complainant are made a perpetual lien upon such

property and any part thereof may be taken and held for payment of all taxes assessed against complainant.

This in itself casts a cloud upon complainant's title.

The illegality of the tax, coupled with the fact that it may result in a cloud being cast upon complainant's title, presents a clear case for equitable interference.

Spelling on Extraordinary Remedies, Sec. 665.

It is well settled that a tax assessment apparently valid on its face, yet illegal or void, is such an incumbrance or charge as will constitute a cloud on title, which a court of equity will interfere to prevent or remove.

Pom. Eq. Jur., (3rd Ed.) Sec. 1345;
Un. Pac. Ry. v. Cheyenne, 113 U. S., 525;
Lyon v. Alley, 130 U. S., 177, 187;
Gage .v Kaufman, 133 U. S., 471;
Cooley on Taxation, 780.

Where a tax act specifically makes the tax a lien upon the real estate of the tax payer, equity has jurisdiction of an action seeking to remove the cloud upon the title thus created.

Ohio River & W. R. Co. v. Dittey, 232 U. S., 576.

2. COMPLAINANT HAS NO ADEQUATE REMEDY AT LAW

It is a guiding rule in the Courts of the United States that a bill in equity does not lie in any case where a *plain, adequate and complete remedy* may be had at law.

Singer Sewing Machine Co. v. Benedict, 229 U. S. 481.

This leads to a consideration of the character of remedy at law open to the complainant in this case. The following statutes relating to the remedy for unlawful taxation were in force in this state, when this action was brought:

"No injunction may be granted by any court or judge to restrain the collection of any tax or any part thereof, or to restrain the sale of any property for the nonpayment

of any tax, unless such tax or the part thereof enjoined is levied or assessed for an illegal or unauthorized purpose or the tax asessment is illegal or invalid." Consolidated Statutes, Sec. 858.

"Unless a tax or assessment, or some part thereof, be illegal or invalid, or be levied or assessed for an illegal or unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part, nor to restrain the sale of any property for nonpayment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taking of any personalty levied on by the sheriff to enforce payment of such tax or assessment against the owner thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the sheriff; but, if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city or town, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city or town for the amount so demanded, including in his action against the county both state and county tax; and if upon trial it shall be determined that such tax or any part thereof was levied for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer." Consolidated Statutes, Sec. 7979.

In Sherrod v. Dawson, 154 N. C., 525, this statute is construed to give the tax payer the option of asking for an injunction or paying under protest and suing to recover back the taxes paid.

If the remedy at law is open to the complainant, it is not such remedy as will defeat the complainant's right to the relief afforded by equity.

The remedy at law, in order to exclude equity, must be as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity.

Tyler v. Savage, 143 U. S., 79.

The remedy at law must be adequate, as will not be the case where the person illegally taxed would suffer irremediable damage, or be subjected to vexatious litigation, if compelled to resort to his legal remedy alone.

Odgen City v. Armstrong, 168 U. S., 224;
Shelton v. Platt, 139 U. S., 591;
Union Pac. R. Co. v. Cheyenne, 113 U. S., 516;
Lyon v. Alley, 130 U. S., 177, 187.

Remedy at law must be prompt and certain.

Wells, Fargo & Co. v. Johnson, 214 F., 180, 189.

An injunction will be granted to prevent the levying of a tax, the payment of which will subject the plaintiff to the hazard of a number of suits from other parties, under the doctrine of the prevention of a multiplicity of suits.

Foster's Fed. Prac., Vol 1, Sec. 209;
Cummings v. Nat. Bank, 101 U. S., 153, 157;
Pelton v. Nat. Bank, 101 U. S., 143, 148;
Hills v. Exchange Bank, 105 U. S., 319, 332;
Assessors v. Pullman Co., 60 Fed. Rep., 37.

In *Elliot on Railroads,* Vol. 2, Sec. 751, (2nd Ed.) it is said:

"We believe the true rule to be that where the tax sought

to be enforced is illegal and void, its enforcement will be restrained by injunction, except in case where an adequate remedy is provided by statute. The rule we have stated is, as we believe, supported by sound principle, and is well fortified by authority. We can see no reason for holding that the enforcement of an illegal tax may not be enjoined, although it may be void.

Even a void proceeding may cloud title and do an injury to a property holder, and there is no remedy except that of injunction, which will effectively prevent or redress the injury. It seems to me where the entire controversy can be settled by the comprehensive equity remedy, and all complications prevented, the remedy should be applied, rather than drive the taxpayer to an action for damages. There is certainly no objection to the employment of the equitable remedy, except that which grows out of the old doctrine, established when the strife between courts of law and courts of equity was bitter, and, as that doctrine is now of comparatively little practical importance, there is reason for extending, as the courts are now doing, the remedy of injunction. We think it wiser to restrain by injunction than to compel an action against the officer whose duty it is to collect the tax."

In a case similar to this, involving a Tennessee statute it was held:

"Equity will interfere to enjoin the collection of an illegal tax upon railroad property, where it appears that, if the tax is paid, it will require some forty suits to recover back the money, and the Federal Court will apply the remedy, notwithstanding a State statute, passed since the company was chartered, prohibits injunctions against the collection of taxes."

L. & N. R. R. Co. v. Gaines, 3 Fed. Rep., 266, 282.

In the case of *In re Tyler*, 149 U. S., 164, 189, the pay-under-protest statute of South Carolina was claimed to be an insuper-

able obstacle to equity jurisdiction, but Chief Justice Fuller denied the contention in the following language:

> "Manifestly the object of this legislation was to confine the remedy of the tax-payer for illegal assessment and taxation to the payment of taxes under protest, and bringing suit against the county treasurer for recovery back, *but all this is nothing to the purpose. The legislature of a state cannot determine the jurisdiction of the courts of the United States,* and the action of such courts in according a remedy denied to the courts of a state does not involve the question of power." (Italics added).

To the same effect are:

> Cummings v. Merchants Nat. Bank, 101 U. S., 153;
> Allen v. B. & O. R. R. Co., 114 U. S., 311;
> Hagood v. Southern, 117 U. S., 71;
> In re Ayers, 123 U. S., 500;
> McGahey v. Virginia, 135 U. S., 676.

Even if these state pay-under-protest statutes were applicable they do not afford a complete remedy to a company which may be subjected to a multiplicity of suits and whose public duties may be seriously interfered with by the seizure of its property.

> Southern Ry. Co. v. Asheville, 69 Fed., 360, 361;
> Lindsay v. Bank, 156 U. S., 485, 494.

It may be contended by defendants that the following statute, enacted since the commencement of this action gives an adequate remedy against the state for the recovery of the franchise tax:

> "Whenever taxes of any kind are or have been through clerical error, or misinterpretation of the law, or otherwise, collected and paid into the State Treasury in excess of the amount legally due the State, the State Auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certificate of the head of

the department through which said taxes were collected or his successor in the performance of the functions of that department, with the approval of the Attorney-General, and the Treasurer shall pay the same out of any funds in the treasury not otherwise appropriated: PROVIDED, demand is made for the correction of such error or errors within two years from the time of such payment: PROVIDED FURTHER, that claims which have arisen within the five years next preceding the ratification of this act shall be presented and made within two years from the ratification of this act." (Chap. 96, Public Laws, Extra Session, 1921).

This statute does not affect the right of complainant to an injunction in this case because (1) it was enacted after suit brought, (2) it does not require the head of the department to act, (3) the State Supreme Court approved the granting of an injunction in a tax suit after its enactment (*Long v. Watts*, 110 S. E., 765.)

A state cannot by statute limit the equity jurisdiction so as to bind the courts of the United States.

Pittsburg, etc. Ry. v. Board of Pub. Wks., 172 U. S., 32;
In re Tyler, 149 U. S., 164.

Right to enjoin illegal taxation upon some recognized equitable ground, such as cloud upon title to real estate, is not barred by the existence of special statutory remedy.

Gregg v. Sanford, 65 Fed., 151;
Bank v. Mylin, 76 Fed., 385;
Taylor v. L. & N. R. R., 88 Fed., 350.

3. IF COMPLAINANT IS REQUIRED TO PAY ITS TAXES UNDER PROTEST AND SUE TO RECOVER BACK THIS WILL LEAD TO A MULTIPLICITY OF SUITS.

The following discussion is for the purpose of showing that in addition to the other grounds of equitable jurisdiction, there

exist facts which justify the interposition of equity to prevent a multiplicity of suits, and, in addition it will emphasize the inadequacy of the remedy, if any exists at law.

> "If the assessments complained of be illegal for any reason, the jurisdiction of a court of equity to enjoin the defendants from certifying them to the several county auditors of the state seems to be clear, upon the ground that a multiplicity of suits would result unless the assessment be enjoined before the assessors shall certify to each county auditor the proportion of the gross assessments collectible by each county auditor under the scheme of apportionment among the counties provided by the act. To require the complainants to pay to each of the numerous county auditors, and then sue to recover, or to enjoin each, would be most oppressive. We think, therefore, that the jurisdiction asserted in the bill, of avoiding a multiplicity of suits, was a sufficient ground to support the original bill subsequently filed to enjoin the tax of 1894, assessed after the jurisdiction of the original case had been attached."
>
> Sanford v. Poe, 69 Fed. 546.

In *Pomeroy's Equity Jurisprudence* (3rd Ed.) p. 418 it is said:

> "By the practice in many of the states, taxes on railroad companies, telegraph companies and the like are assessed by a state board on all the property of the company within the state, and proportionate parts of these taxes are certifed for collection to the tax officials of the various counties in which the company operates. An illegality in the assessment by the state board may thus expose the company to separate suits in many counties, and has frequently been the subject of an injunction on the ground of preventing a multiplicity of suits."

In *Western Union Telegraph Co. v. Norman,* 77 Fed. Rep.,

13, it is held that the equity jurisdiction of the Federal Courts in the case of a bill by a telegraph company to enjoin a state auditor from certifying to the various county clerks the proportions of an alleged illegal tax to be collected in their several counties, is sustainable on the ground of preventing a multiplicity of suits, and because of irreparable injury.

In holding that injunction is the proper form of relief from an assessment for taxation upon unconstitutional principles, Mr. Justice Holmes, in *Fargo v. Hart,* 193 U. S., 490 says: "It avoids the necessity of suits against the officers of the counties of the state, and we are of opinion that the bill can be maintained."

In *Pyle v. Breneman,* 122 Fed., 787, the plaintiff in pursuit of his legal remedy would have been compelled to sue a number of different municipalities among whom the tax collected would have been distributed, and it was held by the Circuit Court of Appeals for the Fourth Circuit, in an opinion by District Judge Boyd, that the remedy at law was inadequate and the jurisdiction of equity to interfere by injunction was sustained.

The averments of the bill of complaint relating to multiplicity of suits and the inadequacy of the remedy at law in the present case are very similar to the averments contained in the bill filed in *Raymond v. Chicago Union Tractor Co.,* 207 U. S., 20, in which the court says:

> "In the case at bar it is averred that it is the duty of the collector, having received the money on his warrant, to pay the sum so received in the proportions designated in his tax books to the city treasurer of the city of Chicago, the county treasurer of the county of Cook, the treasurer of the sanitary district, and other officers and authorities entitled to receive the same, and if the plaintiff instituted suit to recover back the taxes so paid to the town or county collector he would be obliged to bring separate suits against each one of the several taxing bodies receiving its proportionate share of the tax, thereby necessitating a multiplicity of suits, and the proportion of tax which would go

to the State of Illinois could not be collected back by any legal proceeding whatsoever; and if repayment could be compelled from the city of Chicago and other taxing bodies, such repayment would not cover the cost, including commissions deducted for the collection of the tax and in that way it was averred that the appellee would be subjected to great and irreparable injury, for which there was not a complete or adequate remedy at law. There was also the allegation, already referred to in the foregoing statement, that, if compelled to pay this enormous tax, it would be rendered insolvent. We think all these allegations combine to take the case out of the class where relief is prayed for, founded simply upon the unconstitutionality of the law under which the tax is levied, or upon the illegality, for any other reason, of the tax itself and bring the case within the jurisdiction of a court of equity."

It will appear from an examination of the bill of complaint that complainant will be required to bring suit against more than ninety tax officials in twenty six different counties, if it should be held that injunction is not a proper remedy.

4. COMPLAINANT WILL SUFFER IRREPARABLE DAMAGE.

There are two very material ways in which the complainant will suffer irreparable damage if the action of the defendants is not restrained and complainant is required to pay under protest and sue to recover back the amount paid.

First, complainant's road runs through twenty-six counties, seventy-three incorporated towns and numerous special tax districts. Each of these governmental subdivisions must be sued in order to recover back the tax paid. This would make necessary the expenditure of a large sum of money to meet the expense of this litigation, and complainant would have no means of securing reimbursement.

Second, no provision is made by statute for payment of

state taxes to the State Treasurer under protest and recovery back. Authority of the legislature is necessary to suit against the state. Complainant would, therefore, be without remedy at law so far as the taxes paid the state are concerned.

Raymond v. Chicago Union Trust Co., 207 U. S., 20.
Pyle v. Brenneman, 122 Fed. 787.

V.

THE FRANCHISE TAX IS UNCONSTITUTIONAL AND VOID

The Revenue Act of 1921, Section 82 (6½) provides that:

"Every railroad company doing business in this State shall annually on or before the thirtieth day of July make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commision, and giving such information as the State Tax Commission shall require for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one per cent (0.1per cent) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for, it shall

be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city or town shall be allowed to collect any taxes under this section."

This section attempts to impose on the plaintiff, Seaboard Air Line Railway Company a so-called franchise tax of $34,768.44, being one tenth of one per cent of the value "ascertained by the State Tax Commission" of $34.768.44.00.

We submit that this section of the statute violates the Constitution of the United States and the Constitution of North Carolina in that:

First: It is not a franchise tax, but an ad valorem tax and is not levied on other property.

"Neither state courts nor legislatures by giving a tax a particular name or by the use of some form of words can take away our duty to consider its nature and effect."

GH & SA R. Co. v. Texas, 210 U. S., 217;
St. L. & S. W. R. Co., v. Arkansas, 235 U. S., 350.

Burroughs on Taxation, p. 169, says that one of the elements by which a franchise tax is distinguished from a property tax is that "a property tax is imposed upon a valuation which is the basis of the computation. It is assessed by the assessors where it is situated or at the residence of the owner and is collected by the collector of the district; while the franchise tax is imposed directly by the legislature, is not assessed by the assessors and *the amount depends upon the amount of business transacted by the corporation, and the extent to which they have exercised the privileges granted in their charter, without reference to the value of their property or the nature of the investments made in it.*"

The tax imposed by Section 82 (6½) has none of the elements of a franchise tax, other than the name given it by the legislature.

The basis of its calculation bears no relation to the business of the railroad companies on which it is imposed, nor to the extent of the exercise of their charters. It is a percentage of the assessed value of the property of the railroads, and is in no way distinguishable from any other property tax. If this is a property tax its invalidity is apparent because it is imposed only on railroads and certain other corporations and violates the uniformity provision of the Constitution of North Carolina and the Fourteenth Amendment of the Constitution of the United States.

The distinction between an excise tax and a property tax is laid down in Ruling Case Law, Vol. 26, page 35, as follows:

> "An excise and a property tax, when the two approach each other, ordinarily may be distinguished by the respective methods adopted of laying them and fixing their amounts. If a tax is imposed directly by the legislature without assessment, and its sum is measured by the amount of business done or the extent to which the conferred privileges have been enjoyed or exercised by the taxpayer irrespective of the nature or value of the taxpayer's assets, it is regarded as an excise; but if the tax is computed upon a valuation of property, and assessed by assessors either where it is situated or at the owner's domicile, although privileges may be included in the valuation, it is considered a property tax."

Provident Institution v. Massachusetts, 6 Wall., 611;
Pingree v. Auditor General, 120, Mich., 95;
State v. Stonewall Insurance Co., 89 Ala., 335.

Second. It is levied on an erroneous assessment.

This position is of course dependent upon the disposition made of our contention that the assessed value of complainant's property is too high.

Third. It is a burden on interstate commerce.

If this is a franchise tax, and not a property tax, it is void

as a burden on interstate commerce. In assessing the property of a railroad company for the purpose of ad valorem taxation the statutes of North Carolina require that there shall be added to the tangible value the franchise value and such franchise value is arrived at by a consideration of the gross earnings as compared with the operating expenses and particularly by consideration of the value placed upon the whole property by the public as evidenced by the market value of all capital stock and securities. Thus the value arising from the right to engage in interstate commerce is taxed as property. (See Section 64, Machinery Act. Appendix, page 64).

This method of assessment is permissible under the decisions of this court. But the State will not be permitted to add to the burden of a railroad company another tax "for the privilege of exercising its franchise in this State." Such tax is, we submit, manifestly a tax on interstate commerce and a burden thereon within the rules stated in repeated decisions of this Court.

> "Consistently with the commerce clause of the Federal Constitution, the State could not tax the privilege or act of engaging in interstate commerce, but could tax the company's property within the State, although chiefly employed in such commerce."
>
> Wells Fargo v. Nevada, 248 U. S., 165;
> G. H. & S. A. R. Co., v. Texas, 210 U. S., 217.

In *Kansas City Railway v. Kansas,* 240 U. S., 227, at page 23, the court says:

> "It must be assumed in accordance with repeated decisions, that the State, cannot lay a tax on interstate commerce in any form, by imposing it either upon the business which constitutes such commerce or the privilege of engaging in it, or upon the receipts as such derived from it."
>
> Postal Telegraph & Cable Co. v. Adams, 155 U. S., 688.

The defendants recognize the force of our contention that this statute imposes a burden on interstate commerce and at-

tempt to avoid it by taking the position that the tax imposed by the statute is "a privilege or franchise tax imposed upon all railroads, domestic and foreign, for the privilege of exercising their franchises in the State of North Carolina, that is, for the privilege of engaging in strictly intrastate commerce within the said State." (See Sec. 10 of answer Printed Record, page 45).

There has been no construction of the language of section 82 (6½) by the Supreme Court of North Carolina limiting it to intrastate commerce as was the case in *St. Louis Southwestern Ry. Co., v. Arkansas,* 235 U. S. 350, relied upon by defendants in the lower court. We submit that in the absence of such construction by the State Court, this Court will look to the language used and if it is broad enough to include interstate commerce, it will be held to fall within the condemnation of numerous decisions of this court as a burden upon such commerce.

It must clearly appear that only intrastate business is taxed before the statute can be upheld.

> Judson on Taxation (Second Edition.) Sec. 232, citing.
> Webster v. Bell, 68 Fed., 183;
> Express Co. v. Allen, 39 Fed., 712;
> Postal Co. v. Richmond 99 Va., 102 ;
> Oklahoma v. Wells, Fargo & Co., 223 U. S., 97, and Barrett v. New York, 232 U. S., 14.

This statute taxes the railroad company's "privilege of exercising its franchise in this State," both with respect to interstate and intrastate business, and the basis of the assessment upon which the tax is levied includes the value of the property as an interstate as well as intrastate carrier. Manifestly, its language does not clearly limit its application to the privilege of engaging in intrastate business.

Our position that this so-called franchise tax is invalid because it is a burden on interstate commerce is fully sustained by the following cases:

Crutcher v. Kentucky, 141 U. S., 47;
Allen v. Pullman Co., 191 U. S., 171;
Galveston, etc. Ry. Co., v. Texas, 210 U. S., 217;
Western Union Tel. Co. v. Kansas, 216 U. S., 1;
Ludwig v. Telegraph Co., 216 U. S., 146;
Oklahoma v. Wells Fargo Co., 223 U. S., 298;
St. L. & S. W. Ry. Co. v. Arkansas, 235 U. S., 350;
Wells Fargo Co. v. Nevada, 248 U. S., 165.

That this statute is a regulation of interstate commerce is demonstrated, we submit, by the fact that the legislature at the Extra Session of 1921, (Chap. 102 Sec., 2 Public Laws, Extra Session 1921; Appendix page 68) enacted a law amending this section and attempting to restrict its application to *intra-state* commerce. The amending act does not affect the tax already levied under the orginal act.

Dodge v. National Bank, 109 Fed., 726.

Fourth. The legislature has not levied a tax on property for state purposes as required by Section 3, Article 5, of the Constitution of North Carolina.

Under numerous decisions of the Supreme Court of North Carolina, the provisions of Section 3 of Article 5 of the Constitution of North Carolina that "laws shall be passed taxing by uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise; and also real and personal property according to its true value in money" is mandatory and if the legislature levies any taxes for state purposes it *must* levy an ad valorem tax.

Section 3 of the Revenue Act (Public Laws, 1921, Chap. 34; Appendix page 62) provides that no tax on any property in the state shall be levied for any of the purposes of the state government, and for the first time in the history of the state an attempt has been made to support the state government by the levy of income, franchise, inheritance and similar taxes. This is a radical departure from the tax system which has been in

force in this State since the adoption of the Constitution, and violates the letter and the spirit of that instrument.

> "It is the provision and was the purpose of the constitution that thereafter there should be no discrimination in taxation in favor of any class, person or interest, but that everything, real and personal, possessing value as property, and the subject of ownership, shall be taxed equally and by uniform rule."
>
> Kyle v. Commissioners, 75 N. C., at page 446.

In *Commissioners, v. Tobacco Co.,* 116 N. C., at page 446. Chief Justice Clark, then Associate Justice, says:

> "As to corporations, by all the authorities, it is in the power of the legislature to lay the following taxes, two or more of them in its discretion at the same time: 1. To tax the franchise (including in this the power to tax also the corporate dividends). 2. The capital stock. 3. The real and personal property of the corporation. *This tax is imperative and not discretionary under the ad valorem feature of the constitution.* The shares of stock in the hands of the stockholders. This is also imperative and not discretionary." (Italics added).
>
> "The constitution, Art. 5 Sec. 3, commands that: Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money. It is apparent from an examination of the taxing laws of the State that the legislative department has attempted to observe and enforce *the mandate of the constitution.*" (Italics added).
>
> Manning, J., in Pullen v. Corporation Commission, 152 N. C., at page 553.

> "Whatever may have been the intention of the General Assembly in employing language so broad and compre-

hensive, we are forced to the conclusion that under the constitution of North Carolina all real and personal property owned and located within the borders of the State is subject to an ad valorem tax, and it is not to be supposed that the legislature intended to violate the fundamental law of the State, Art. V, Sec. 3, which requires in express terms that all real and personal property be taxed by a uniform rule according to its true value in money. In this respect the constitution 'shows no favor and allows no discretion.' *Wiley v. Commissioners,* 111 N. C., 397; *Puitt v. Commissioners,* 94 N. C., 709; *Vaughn v. Murfreesboro,* 96 N. C., 319. The imperative demand to levy the property tax upon the assessed value is in no way connected with the right to levy an inspection tax, or a tax on trades, professions, etc."

Guano Co. v. Biddle, 158 N. C., at page 212.

Section 3 of Article V is mandatory in requiring that taxation upon the property mentioned in it shall be ad valorem and that whatever tax is levied shall be uniform in its application.

R. R. v. Newbern, 147 N. C., 165;
Bickett v. Tax Commission, 177 N. C., 436.

In *Smith v. Wilkins,* 164 N. C., 140, Justice Allen says:

"In *State v. Worth,* 116 N. C., 1010, the court defines the term 'trades' as including any employment or business embarked in for gain or profit, and while the Constitution, Art. V, Sec. 3, is *mandatory* upon the General Assembly to levy a tax upon all *property* by a *uniform rule,* the authority to tax trades is permissive only, and no rule as to the method is prescribed."

In *Lacy v. Packing Co.,* 134 N. C., page 573, it is said:

"The legislature is sole judge of what subjects it shall select for taxation (other than a property tax, which must be uniform and ad valorem) and the exercise of its dis-

cretion is not subject to approval of the judicial department of the State."

"By the Constitution, Art. V, Sec. 3, all the real and personal property in the State is required to be taxed uniformly according to its value."

R. R. v. Commissioners, 72 N. C., 10.

Article VII, Sec. 9, provides that: "All taxes levied by any county, city, or town or township shall be uniform and ad valorem upon all property in the same, except property exempted by this constitution." In construing this section in *Redmond v. Commissioners*, 106 N. C., 122, the Supreme Court held that it was not intended to apply the rules of uniformity to the subjects alone selected by the Legislature for taxation in granting a municipal charter but requires that *all* property in the municipality shall be taxed, and taxed uniformly and equally. In the opinion of the court, Justice Shepherd says:

"In the absence of constitutional limitations there is, it is said, no restraint whatever upon the Legislature, and it may discriminate in favor of or against a particular class of persons or property, and pass laws in violation of every principle of just government, by an unequal distribution of the public burdens. The check upon such an abuse of power is in the influence of the constituents over their representatives; and the weight of authority is that the courts have no right to interfere with this exercise of the legislative will.

Thus it is seen that a wide field is open for a war between different classes of property, in that one class may be taxed to the exclusion or to the prejudice of another, and that under the forms of a free government, an excited partisan legislative majority may commit wrongs against the rights of property as flagrant and oppressive as those which have disgraced the reigns of the most despotic rulers. But it is said that the General Assembly will be in-

fluenced by proper motives, and will levy taxes upon a just basis.

Experience has shown that the principles of taxation should not be left to the uncertainty or caprice of successive Legislatures, but that they should be fixed and immutable, and embodied in the fundamental law, under whose broad shield all property, of whatsoever species, may be equally protected.

This, we think, was the purpose of the framers of our Constitutioon in inserting therein the section referred to, as well as section 3, Art. 5, relating to State taxation.

No one who reads these and other provisions of the constitution will fail to be impressed with the earnest effort there made to engraft upon our organic law the great principle of equality in taxation."

It cannot be successfully contended that the levy of an ad valorem tax for county purposes complies with the requirements of Section 3 of Article 5 of the Constitution. Such tax is levied under Section 7 of Article 9, which relates to the levy of taxes by counties, cities, towns and townships, and the requirement of uniformity applies only to the property within the borders of the county, city, etc. Certainly the county taxes are not uniform throughout the state, as required by Section 3 of Article 5. (Section 3, Article 5, and Section 7, Article 1 are set out in full in the Appendix, page 61).

In failing to levy a property tax for state purposes a greater proportion of the burden of taxation has been cast upon the complainant in that a proportionate part of the franchise tax of 1-10 of 1 per cent on the assessed value of its property, if this tax is valid as a franchise tax, was levied in lieu of the property tax demanded by the Constitution. The levy of a property tax for state purpose would have obviated in part, if not in whole, the necessity for a franchise tax on railroads.

CONCLUSION

We submit, in conclusion:

1. That complainant has established a case of illegal discrimination in the assessment of its property.

2. That complainant has established the invalidity of the so-called franchise tax.

3. That complainant has established its right to an interlocutory injunction to maintain the *status quo* until the hearing.

4. That complaintant will suffer irreparable injury if such interlocutory injunction is refused, and the defendants will suffer no possible harm if the interlocutory injunction is granted.

Wherefore, we ask this Court to reverse the order of the District Court and direct that the interlocutory injunction be granted for the reasons herein set forth.

Respectfully submitted,

MURRAY ALLEN,
Counsel for Appellant.

FORNEY JOHNSTON,
JAMES F. WRIGHT,
of Counsel.

APPENDIX

EXTRACTS FROM CONSTITUTION OF NORTH CAROLINA

ARTICLE V

Sec. 3. Taxation Shall be by Uniform Rule and Ad Valorem: Exemptions. Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money. . . . The General Assembly may also tax trades, professions, franchises and incomes," etc.

Sec. 6. Taxes Levied for Counties. The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by Article 9, Sec. 3, of the Constitution: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property."

ARTICLE VII

Sec. 9. All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same except property exempted by this Constitution.

EXTRACTS FROM TAX STATUTES OF NORTH CAROLINA

SEC. 3, CH. 34, PUBLIC LAWS OF NORTH CAROLINA, 1921.

Sec. 3 State Taxes.

No tax on any property in the State shall be levied for any of the uses of the State Government. The taxes hereinafter levied in this act are for the expenses of the State Government the appropriations of its educational, charitable, and penal institutions, pensions for Confederate soldiers and widows, the interest on the debt of the State, as equalizing fund for public schools, and other specific appropriations made by law, and shall be collected and paid into the general fund of the State Treasurer.

SEC. 28 (a), CH. 38, PUBLIC LAWS OF NORTH CAROLINA, 1921.

Sec. 28 (a). County Boards to Review Valuation of Real Estate.

The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen (any vacancy which may have occurred to be filled by appointment of the board of county commissioners), shall meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of real property as heretofore appraised and assessed in the county as a whole is in excess of the fair value of such property at the time of meeting of such board. The chairman of the board of county commisioners shall be the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be the secretary of the said board. The said board shall make proper inquiry and investigation into the existing values of real property as compared with the assessed and appraised values thereof in the several cities, towns, and townships of the county; and if it shall find that the assessed value of such property is in excess of the actual value, it shall

find the average percentage of such excess in the county as a whole, or in the several cities, towns, and townships, and shall report its finding so made to the State Tax Commission not later than the twentieth day of April, one thousand nine-hundred and twenty-one. The values so reported shall be the values at which the property shall be assessed for taxation, unless and until the same have been changed and revised by the State Tax Commission and certified to the board of county commissioners of such county, which shall be done not later than the first day of July, one thousand nine hunded and twenty-one.

SEC. 28 (e), CH. 38, PUBLIC LAWS OF NORTH CAROLINA, 1921.

Sec. 28 (e). In any proceedings under this act the county board of review or county board of commissioners, or any of their representatives, shall have access to the questionaires filed by the owners of real property in the county under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen, the tax rolls for the several townships and any other records pertaining thereto.

It shall be the duty of the State Tax Commission to exercise the authority of supervision herein imposed, to the end that, as nearly as may be, property of all classes in all counties of the State may be fairly and equally valued in accordance with the requirements of the Constitution and the provisions of this act, and if in any case in doubt as to whether changes in valuation in any county should be approved, it shall have the authority, and it shall be its duty, to make or cause to be made such investigations as it may deem necessary to determine the facts and reach a just conclusion.

The words "actual value," as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold.

SEC. 28 (g), CH. 38, PUBLIC LAWS OF NORTH CAROLINA, 1921.

Sec. 28 (g). Any taxpayer owning property assessed originaly by the State Tax Commission may make application to the State Tax Commission for a review of the assessment of its property in the same manner herein provided for complaint by property owners before the county boards, and the State Tax Commission may hear and determine such complaints.

SEC. 64, CH. 38, PUBLIC LAWS OF NORTH CAROLINA, 1921.

Sec. 64. Tangible and Intangible Property Assessed Separately.

(a) At such dates as real estate is required to be assessed for taxation, the said commission shall first determine the value of the tangible property of each division or branch of such railroad of rolling stock and all other physical or tangible property. This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property.

(b) They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property.

(c) The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an *ad valorem* taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certify, on or before the first day of Sep-

tember, to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city, or town; all taxes due the State from any railroad company shall be paid by the treasurer of each company directly to the State Treasurer within thirty days after the first day of July of each year; and upon failure to pay the State Treasurer as aforesaid, he shall institute an action to enforce the same in the county of Wake or any other county in which such railroad is located, adding thereto twenty-five per centum of the tax. The board of county commissioners of each county through which said railroad passes shall assess against the same only the tax imposed for county, township, or other taxing district purposes, the same as is levied on other property in such county, township, or special taxing districts.

SECS. 65, AND 66 CH. 38, PUBLIC LAWS OF NORTH CAROLINA, 1921.

Sec. 65 Railroads.

When any railroad has part of its road in this State and part thereof in any other State, the said commission shall ascertain the value of railroad track, rolling stock, and all other property liable to assessment by the State Tax Commission of such company as provided in the next preceding section, and divide it in the proportion to the length such main line of road in this State bears to the whole length of such main line of road, and determine the value in this State accordingly: Provided, the commission shall, in valuing the fixed property in this State, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State than the average value for the entire system. On or after the first Monday in July the said commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said Commission

may, if they see fit, require all argument and communications to be presented in writing.

SEC. 66. RAILROADS.

If the property of any railroad company be leased or operated by any other corporation, foreign or domestic, the property of the lessor or company whose property is operated shall be subject to taxation in the manner hereinbefore directed; and if the lessee or operating company, being a foreign corporation, be the owner or possessor of any property in this State other than that which it derives from the lessor or company whose property is operated, it shall be assessed in respect to such property in like manner as any domestic railroad company.

SEC. 98, CH. 38, PUBLIC LAWS OF NORTH CAROLINA, 1921.

Sec. 98. Taxes on railroads shall be a lien on property of the same.

The taxes upon any and all railroads in this State, including roadbed, right of way, depots, sidetracks, ties and rails, now constructed or hereafter to be constructed, are hereby made a perpetual lien thereupon, commencing from the first day of May in each current year, against all claims or demands whatsoever of all persons or bodies corporate except the United States and this State; and the above described property or any part thereof may be taken and held for payment of all taxes assessed against said railroad company in the several counties of this State.

CHAPTER 40, PUBLIC LAWS OF NORTH CAROLINA OF 1921.

Sec. 1. From and after the first day of May, one thousand nine hundred and twenty-one, all the powers and duties imposed by any act of law, including Revenue and Machinery Acts, enacted by the present session of the General Assembly, upon the State Tax Commission, shall be transferred to and imposed upon a department to be known as the State Department of Revenue, created by this act, to be administered by the Commissioner of Revenue, to be appointed as provided

in this act. All such powers and duties, except as otherwise provided herein, shall devolve upon the Commissioner of Revenue, and wherever in the revenue laws of the State the words "State Tax Commission" are used, such words shall, after May first, one thousand nine hundred and twenty-one, be held to mean Commissioner of Revenue, except as otherwise provided in this act.

Sec. 2. There is hereby created the office of Commissioner of Revenue, to be appointed by the Governor, by and with the advice and consent of the Senate, and if such appointment is made when the Senate is not in session, confirmation may be made by the Senate at the next session. The term of office shall be for four years from and after the first day of May, one thousand nine hundred and twenty-one, and the succeeding commissioner of revenue shall be nominated and elected in the year one thousand nine hundred and twenty-four, in the manner provided for the nomination and election of other State officers, and quadrennially thereafter.

Sec. 3. The powers and duties now exercised by the State Tax Commission as a State Board of Equalization, and the appellate authority exercised by the said State Tax Commission in determining appeals from valuations made by assessing officers in the several counties of the State, shall, from and after the first of May, one thousand nine hundred and twenty-one, be held and exercised by a State Board of Equalization, composed of the Commissioner of Revenue, the chairman of the Corporation Commission, and the Attorney General, who shall be ex officio members of and constitute the State Board of Equalization, to have and exercise the powers and duties now imposed by law upon the State Tax Commission as a State Board of Equalization, and as an appellate court, to hear and determine appeals from valuation of property by assessing officers in the several counties. The said board shall meet upon call of the Commissioner of Revenue as often as may be necessary to discharge the duties imposed by law upon the said board.

SEC. 82 (6½), CHAP. 34, PUBLIC LAWS OF NORTH CAROLINA, 1921.

Sec. 82 (6½). Railroads.

Every railroad company doing business in this State shall annually on or before the thirtieth day of July make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such raiload company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one per cent (0.1 per cent) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city or town shall be allowed to collect any taxes under this section.

AMENDMENT OF SECTION 82 (6½), CHAPTER 34, PUBLIC LAWS OF NORTH CAROLINA PASSED BY EXTRA SESSION OF GENERAL ASSEMBLY OF 1921, CHAPTER 102, PUBLIC LAWS EXTRA SSION, 1921.

Sec. 2. That chapter thirty-four, Public Laws of one thous-

and nine hundred and twenty-one, section eighty-two, subsection six and one-half (6½), be and the same is hereby amended so as to read as hereinafter set forth in this section, and as so amended the said subsection six and one-half be and it is hereby transposed from the said section eighty-two to section seventy-eight of the said chapter, to stand as section seventy-eight of the said chapter, and to read as follows, to wit:

PRIVILEGE TAX ON RAILROADS

Every railroad company doing business in this State shall annually, on or before the thirtieth day of July, make and return to the Commissioner of Revenue, in such form and upon such blanks as shall be required and furnished by him, and giving such information as he shall require for the purpose of carrying out the provisions of this section, a report upon which the Commissioner of Revenue shall ascertain and certify to the State Auditor the value upon which the amount of tax to be paid by any such railroad as a license or privilege tax shall be calculated. The value upon which such calculation shall be made by the State Auditor, and the measure of the extent to which every such railroad company is carrying on intrastate commerce within the State of North Carolina, shall be the value of the total property, tangible and intangible, in this State, of each such railroad company as assessed for ad valorem taxation for the year in which such report is made. The tax which every railroad company shall pay for the privilege of carrying on intrastate commerce within this State shall be one-tenth of one per cent, of the value so ascertained and certified by the Commissioner of Revenue, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for it shall be the duty of the Commissioner of Revenue to make an approximation from the reports and records on file in the State Department of Revenue of the value upon which the amount of tax due by the said company under this section shall be calculated, and to certify the said value to the State Audi-

tor. Upon that value the State Auditor shall then calculate the amount of the said tax, as hereinbefore provided, and shall certify the same to the State Treasurer for collection. No county, city or town shall be allowed to collect any taxes under this section: Provided, that it is the intention of this section to levy upon railroads a license or privilege tax for the privilege of engaging in intrastate commerce carried on wholly within the State of North Carolina and not a part of interstate or foreign commerce; that the tax provided for in this section is not intended to be a tax on the privilege of engaging in interstate commerce, nor is it intended to be a tax on the business of intersstate commerce, nor is it intended to be a tax having any relation to the interstate or foreign business or commerce in which any such railroad company may be engaged in addition to its business in this State.

OCT 4 1922.
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922

NO. 382

ATLANTIC COAST LINE RAILROAD COMPANY,
Appellant,
vs.
A. D. WATTS AND A. D. WATTS AS COMMISSIONER OF REVENUE, ET AL.
Appellee.
IN EQUITY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

BRIEF OF APPELLANT.

THOMAS W. DAVIS,
Solicitor for *Appellant.*
Wilmington, N. C.

GEORGE B. ELLIOTT,
HARRY SKINNER,
H. W. WHEDBEE,
Of Counsel.

R. F. ROBERTS CO. WASHINGTON D. C.

Table of Cases, Acts and Authorities Cited.

PAGE

Act to Refund Taxes Illegally Collected.....19
Adams Express Co. v. Ohio State Auditor, 165 U. S. 194; 166 U. S. 185.....46, 99, 100, 102, 110
Ad Valorem, definitions.....76-79
Albertson v. Wallace, 81 N. C. 479.....81
Allison v. Corson, 88 Fed. 581.....183
American Net & Twine Co. v. Worthington, 141 U. S. 468 174
Armstrong v. Stedman, 130 N. C. 217.....18
Asbel v. Kansas, 209 U. S. 251.....104
A. T. & S. F. R. R. v. O'Connor, 223 U. S. 280.....120
Atlantic & P. Tel. Co. v. Phila., 190 U. S. 160.....14, 20
A. C. L. Ry. Co. v. N. Car. Corp. Com., 206 U. S. 20..148
A. C. L. Ry. Co. v. Dunning, 166 Fed. 850.....12
Bailey v. Fuquay, 22 Miss. 497.....77
Baltic Mining Co. v. Mass., 231 U. S. 68....111, 113, 121
Bank of Commerce v. Commissioners, 2 Black 620....77
Bank Tax Cases, 2 Wall. 200.....76
Bayard v. Singleton, 1 N. C. 43.....189
Benziger v. U. S. 192 U. S. 38.....174
Bisphan's Eq. (6th Ed.).....186
Black on Interpretation of Law.....153
Black on Tax Titles.....78
Blackwell Durham Tobacco Co. v. McElwee, 94 N. C. 425 186
Bordens Condensed Milk Co. v. Baker, 177 Fed. 906..14-20
Brinkley v. Smith, 130 N. C. 224.....18
Brown v. Maryland, 125 U. S. 12.....92-3
Buskirk v. King, 72 Fed. 22, 18 C. C. A. 418.....183
Capehart v. Mhoon, 45 N. C. 30.....186
Chadbourn S. D. & Lbr. Co. v. Parker, 153 N. C. 130...90
C. & E. I. R. R. v. State, 51 N. E. 924..... 75
C. C. C. & St. L. R. Co. v. Backus, 154 U. S. 439...46
Chicago, etc., Co. v. State Board of Equalization, 114 Fed. 557 71
Chin Yow v. U. S., 208 U. S. 13.....148
Choctaw & Gulf Ry. Co. v. Harrison, 235 U. S. 292 114, 116, 136, 172

PAGE
City of Newton v. Lewis, 79 Fed. 715 178-9
Cobb v. Elizabeth City, 75 N. C. 1.....68
Cobb v. Clegg (N. C.) 49 S. E. 80.....185-7
Coleman v. Howell (N. C.) 42 S. E. 554.....185
Combs v. Adams, 63 S. E. 186.....188
Comparison of Sections 82 (3½) and 78.....151-154
Connor on Constitution of N. C., ...64-5, 80-1
Consolidated Gas Case, 157 Fed. 849, 870.....71
Consolidated Statutes of N. C., 1919, Sec. 3950.....150
Consolidated Statutes of N. C., Sec 7979, 1919.....14, 17
Const. of N. C., Art. 5, Sec. 3.....15, 33, 68, 166
Constitution of North Carolina, Art. 5 Sec. 6.....15
Const. of N. C., Art. 7, Sec. 9.....16, 65, 67-9, 166
Cooley on Taxation.....17, 78, 116, 152-3, 176
Coulter v. L. & N. R. Co., 196 U. S. 599 and 131 Fed. 282 .....159, 163
Coulter v. Weir, 127 Fed. 897.....142
Crew Levick v. Pa., 245 U. S. 294.....172
Cummings v. Merchants National Bank, 101 U. S. 153 13, 16, 20-1, 59, 63-4
Davis, D. Gen. v. Wallace, decided January 9, 1922.131-135
Denver & R. G. Ry. Co. v. U. S., 124 Fed. 156.....183
1 Desty on Taxation 104.....153
Diamond Glue Co. v. U. S. Glue Co., 187 U. S. 611, 616 137
Dunning v. A. C. L. Ry. Co., 166 Fed. 850.....12
Dwarris on Statutes.....176
Elizabeth City v. Pasquotank County, 146 N. C. 539..155
Evans v. Gore, 253 U. S. 245.....138
Exchange Bank v. Hines, 3 Ohio 1.....59
Ex Parte Lam Fuk Tak, 217 Fed. 468.....147
Ex Parte Lam Pui, 217 Fed. 456.....145-7
Ex Parte 74 Interstate Com. Com.....142, 163
Ex Parte Virginia, 100 U. S. 347.....16
Ex Parte Young, 209 U. S. 123.....12, 17
Fargo v. Hart, 193 U. S. 490..46, 100-1, 107-8, 128, 142
Fargo v. Michigan, 121 U. S. 230.....92
Farmers' Bank v. Minn., 232 U. S. 516.....115
Flint v. Stone Tracey Co., 220 U. S. 107.....106, 108

PAGE

Forty-Two Broadway Co. v. Anderson, 209 Fed. 99...174
Gaar, S. & Co. v. Shannon, 223 U. S. 468.....14
Galveston, Harrisburg, etc., R. R. v. Texas, 210 U. S. 217.....74, 85, 96, 102-13, 116, 139, 168-9, 171-3
Georgia v. Bralesford v. Dall. 402.....183
Gillespie v. Oklahoma, decided by Sup, Ct. Jan. 30, 1922 136, 138
Glascott v. Lang, 3 Myl. & C. 452.....180
Gould v. Gould, 245 U. S. 154.....174
Great Western R. Co. v. Birmingham, etc., R. Co. 2 Phil. Ch. 597.....181
Greene v. L. & N. Ry Co., 244 U. S. 499..12, 14, 20, 58-60, 64
Guano Co. v. Tarboro, 126 N. C. 68.....81
Hadden v. Dooley, 74 Fed. 420.....180-1
Hanges v. Whitfield (DC) 209 Fed. 675..... 146
Heilig v. Stokes, 63 N. C. 612.....186
Herndon v. D. & S. R. R., 77 S. E. 683.....189
Harriman, et al v. Northern Securities Co., et al., 132 Fed. 464 177-184
High on Injunctions (I) 3d Ed.....186
Home Ins. Co. vs. State of New York, 134 U. S. 594.. 75
Howard v. Gypsy Oil Co. 247 U. S. 503.....137
Hyatt v. DeHart, 140 N. C. 270, 52 S. E. 781....18, 188
Income Tax 1921 (N. C.) Sec. 100.....169
Income Tax, 1921 (N. C.) Sec. 101.....169-170
Income Tax, 1921 (N. C.) Sec. 202.....170-71
Indianapolis Gas Co. v. Indianapolis (CC) 82 Fed. 245 183
Indian Terr. Illuminating Oil Co. v. Okla., 240 U. S. 522 136
Insurance Co. v. Stedman, 130 N. C. 221..... 18
International Paper Co. v. Mass., 246 U. S. 135..122-125
International Text Book Co. v. Pigg, 217 U. S. 91....120
Interstate Com. Com. v. Ill. Cent., 215 U. S. 470....148
Interstate Com. Com. v. L. & N. Ry., 227 U. S. 88 .....144, 147-8
Jarman v. Sanders, 64 N. C. 367.....186
Johnson v. Maryland, 254 U. S. 51.....138

PAGE

Judicial Code, Sec. 24 11
Judicial Code, Sec. 266 6
Kansas City, Ft. S. & M. R. v. Botkin, 240 U. S. 227 .121
Kansas City, M. & B. R. Co. v. Stiles, 242 U. S. 111 ..121
Kerr on Injunctions 179
King County, Wash., v. N. P. Ry. Co., 196 Fed. 325 ..20
Knowlton v. Supervisors, 9 Wis. 422 67
Kyle v. Commissioners, 75 N. C. 445 68-9
Large Oil Co. v. Howard, 248 U. S. 549 137
Latta v. Williams, 87 N. C. 126 67
Lee v. A. C. L. Ry. Co., 150 Fed. 775 11
Leloup v. Port of Mobile, 127 U. S. 640 95
Levy v. Louisville (Ky.) 28 L. R. A. 480 79
Lincoln Gas Co. v. Lincoln, 250 U. S. 256 71
Little Rock v. Board of Improvement, 42 Ark. 162 78
London v. Wilmington, 78 N. C. 109 69
Looney v. Crane, 245 U. S. 178 .....118-122, 124
Louisville & Nashville R. R. Co. v. Bosworth, 209 Fed. 380 .....14, 20, 143-5, 185
Louisville & Nashville R. R. Co v. Coulter, 131 Fed. 282 71
Louisville & Nashville R. R. Co. v. Greene, 244 U. S. 522 .....14, 20
Louisville & Nashville Ry Co. v. Taylor, 86 Fed. 168 .. 16
Louisville & Nashville Ry. Co. v. U. S. et al., 227 Fed. .258
Louisville Trust Co. v. Stone, 107 Fed. 305 16
Lowe v. Commissioners, 70 N. C. 532 186
Low Way Suey v. Backus, 225 U. S. 468 148
Ludwig v. Western Union Telegraph Co., 216 U. S. 146 .....106, 120
Lumber Co. v. Smith, 146 N. C. 199 .....15, 18
Machinery Act, 1921, Sec. 64 ....34, 38-9, 40-1, 43-5
Machinery Act, 1921, Sec. 65 .....23, 46
Machinery Act, 1921, Sec. 98 17
Machinery Act, 1921, Sec. 107 17
Maine v. Grand Trunk Ry., 142 U. S. 217 95-6, 102, 108, 139
Mann v. Allen, 171 N. C. 219 154
Marshall v. Commissioners, 89 N. C. 103 186

PAGE

McAlester-Edwards Coal Co. v. Trapp, 38 Okla. 792...115
McCullough v. Maryland, 4 Wheat. 316.....115
Meyer, Auditor of State of Okla. v. Wells Fargo Co. 223 U. S. 298.....96, 97, 106-8, 109, 116
Milwaukee, Elec. Ry. v. Milwaukee, 87 Fed. 577..... 71
Missouri, Kansas & Tex. Ry. v. Meyer, 204 Fed. 140..115
Mowery v. Salisbury, 82 N. C. 175..... 81
Musser v. Magone, 155 U. S. 247.....148
National Bank v. Kimball, 103 U. S. 732.....15
New Memphis Gas & Light Co. v. Memphis (C.C.) 72 Fed. 952.....183
New York, New Haven & Hartford Ry. Co. v. New York, 165 U. S. 628.....137
Oahu Ry. & Land Co. v. Pratt, 4 Hawaii 126.....138
Ogden City v. Armstrong, 168 U. S. 244.....17
Ohio Tax cases, 232 U. S. 576-592.....17, 112-3, 116
Oklahoma v. Fargo, 223 U. S. 298.....96-7, 106-9, 116
Partington v. Attorney General, L. R. 4 H. L. 100....175
Pelton v. National Bank, 100 U. S. 143.....15
People v. Knight, 67 N. E. 65.....76
Person v. Person, 70 S. E. 752.....186
Phila, & M. S. Co., v. Penna., 122 U. S. 326..93, 96, 110
Pittsburgh, C. C. & St. L. v. Backus, 154 U. S. 424....71
Pollock v. Farmers' Loan & Tr. Co., 157 U. S. 429; 158 U. S. 601.....138
Postal Tel. Co. v. Adams, 155 U. S. 688.....97-8, 121
Providence Savings Inst. v. Mass., 73 U. S. 611.....75
Puett v. Commissioners, 94 N. C. 709.....65,69
Pullen v. Commissioners, 68 N. C. 451.....67
Pullman Co. v. Kansas, 216 U. S. 56.....105, 120
Pullman Co. v. Knott, 235 U. S. 23.....116
Pullman Co. v. Penna.....102-3
Purnell v. Daniel, 43 N. C. 9.....186, 187
Purnell v. Page (N. C.) 45 S. E. 534, 133 N. C. 125 ....15, 18, 185
Ragan v. Farmers Loan & Tr. Co., 145 U. S. 390....16
Range Co. v. Carver, 118 N. C. 328.....14, 18
Ratterman v. W. U. Tel Co., 127 U. S. 411.....95
Raymond v. Chicago U. T. Co., 207 U. S. 20, 13-16, 20, 59, 163

PAGE

Redmond v. Tarboro (N. C.) 10 S. E. 845
65-69, 167-8
Revaluation Act, 1919 53
" Act, 1919, Chap. 84, sec. 2.....156
" Act, 1919, Chap. 84, sec. 5.....156-7
" Act, 1919, Chap. 84, sec. 31..... 36
Revenue Act, Chap. 34, sec. 3.....83-84
Revenue Act, 1921, (NC), Chap. 38.....37
Revenue Act, 1921, (NC), sec. 77..... 81
79a..... 82
80..... 82
81..... 82
82.....85, 7, 9
Revenue Act, Chap. 82 (3½)...9, 24, 85, 86, 87, 88, 89
Revenue Act, 1921, sec. 82 (7).....83
" 82 (8).....83
" 82 (9).....86, 87, 88, 90
" 82 (6½)....24, 73, 83, 84, 88, 89
Robins v. Shelby Taxing District, 120 U. S. 489..... 93
Royster Guano Co. v. Virginia, 253 U. S. 412.....129
Ruling Case Law, vol. 25, p. 962.....88
Ruling Case Law, vol. 25, p. 981..... 88
Ruling Case Law, vol. 25, p. 1048..... 89
Ruling Case Law, vol. 26, p. 32-35..... 80
Russell v. Farley, 105 U. S. 433.....179
Saint L. S. W. Ry. v. Arkansas, 235 U. S. 350,
74, 85, 116-18, 121, 128
Sanford v. Poe, 69 Fed. 546..... 21
Sanitary Reduction Works v. California Reduction Co.,
(CCA) 94 Fed. 694.....183
San Mateo County v. Railroad, 13 Fed. 722..... 16
Santa Clara County v. Railroad, 18 Fed. 385..... 16
Santiago Water Co. v. Santiago, 50 Pac. 633..... 71
Scott v. Donald, 165 U. S. 71..... 16
Seip v. Wright, 91 S. E. 359.....189
Shaffer v. Carter, 252 U. S. 37.....14, 15, 129-30, 137
Shelton v. Platt, 139 U. S. 591.....17
Sherrod v. Dawson, 154 N. C. 525.....15, 18
Shrewsbury v. Chester R. Co. v. Shrewsbury R. Co.,
1 Sim N. S. 410.....182

PAGE
Singer Sewing Machine Co. v. Brickell, 233 U. S. 304..114
Smyth v. Ames, 169 U. S. 466.....12-13, 20
Society for Savings v. Hoyt, 6 Wall. 594.....76
Southern Ry. Co. v. Cherokee Co., 97 S. E. 758.....189
Southern Ry. Co. v. N. C. Corp. Com., 97 Fed 513..174-5
Southern Pacific Ry. v. Earl, 82 Fed. 690, 27 C. C. A. 185 183
Southern Pacific Co. v. Interstate Com. Com., 219 U. S. 433 148
Spring Valley Water Works, 124 Fed. 574.....71
Stanley v. Supervisors, 121 U. S. 535.....15
State v. Bean, 91 N. C. 554.....67
State ex-rel, v. Dombaugh, 20 Oh. St. 167.....135
State v. Greene, 35 S. E. 462.....176
State v. Haynie, 169 N. C. 277.....154
State v. Littlefield, 93 N. C. 614.....155
State v. Stonewall Ins. Co. (Ala.) 7 Sou. 753..... 76
State v. Williams, 61 S. E. 61.....188
State Franchise Tax Case, 15 Wall. 232..... 92
State Franchise Tax Case & Case of State Tax on Railroad Gross Receipts, 15 Wall. 284..... 93
Stearns v. Minn., 179 U. S. 241.....188
Stockard v. Morgan, 185 U. S. 27.....104
Tang Tun v. Edsell, 223 U. S. 681.....148
Taylor v. L. & N. R., 88 Fed. 350.....13, 20, 59, 60-62
Thomas v. Gay, 169 U. S. 264.....115
Thompson v. Pacific R. R., 9 Wall. 579.....115
Tise v. Whitaker Harvey Co., 57 S. E. 210.....188
Tremont & S. Mills v. City of Lowell, 59 N.E. 1007.. 75
Troy v. Norment, 55 N. C. 318.....187
Truax v. Corrigan..... 135
Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113 130-131
Union Pacific Ry. Co. v. Colorado, 247 U. S. 282..... 21
Union Pacific Ry. Co. v. Peniston, 18 Wall. 5.....115
Union Tank Line v. Wright, 249 U. S. 275..125-126, 128
United States v. Balto. & O. S. W. Ry. Co., 226 U. S. 14 148

PAGE

United States v. Wigglesworth, 2 Story, 369, Fed. Case No. 16690.....174, 175
United States Express Co. v. Minn. 223 U. S. 335, 109-111, 113
United States Glue Co. v. Oak Creek, 247 U. S. 231...137
Vaughn v. Murfreesboro, 96 N. C. 317..... 69
Waddill v. Masten, 172 N. C. 582.....153-4
Wallace v. Hines, 253 U. S. 66 14, 20, 30, 62, 126-129, 132, 141-2
Washington Water Power Co. v. Kootenai Co., et al., 270 Fed. 369.....58, 63
Washington, ex rel, Ore. R. & Nav. Co., v. Fairchild, 224 U. S. 510.....148
Western Union Tel. Co. v. Alabama, 132 U. S. 472... 95
Western Union Tel. Co. v. Kansas, 216 U. S. 1, 105, 106, 120
Western Union Tel. Co. v. Mass., 125 U. S. 530....93-94
Western Union Tel. Co. v. Taggart, 163 U. S. 1...46, 98
Western Union Tel. Co. v. Texas, 103 Tex. 306.....120
Western Union Tel. Co. v. Trapp, 186 Fed. 114.....15
Weston v. Charleston, 2 Peter 449.....138
William E. Peck & Co. Inc., v. Lowe, 247 U. S. 165....137
Williams v. Talladega, 226 U. S. 404.....113, 138
Winston v. Taylor, 99 N. C. 210.....67
Wisconsin M. & P. R. Co. v. Jacobson, 179 U. S. 301..148
Worth v. Petersburg, R. Co., 89 N. C. 301.....74
Young v. Henderson, 76 N. C. 420.....69
Zakonaite v. Wolf, 226 U. S. 272.....148

INDEX.

PART I.

JURISDICTION

PAGE

1. As to Citizenship 11
2. Amount 12
3. This is not a Suit against the State 12
4. The Tax is in Violation of the Fourteenth Amendment to the Constitution of the United States and of the Commerce Clause of the Constitution of The United States, as well as in Violation of the Constitution of North Carolina 12
5. Uniformity and Equality of Taxation 15
6. The Assessment Casts a Cloud upon Complainant's Title 17
7. Complainant has no Adequate Remedy at Law 17
8. Equity has Jurisdiction to Prevent a Multiplicity of Suits 21

PART II.

FACTS AND CONTENTIONS

1. Summary of Facts 22
2. Contentions of Complainant 25
3. Summary of Facts as to Assessment 26

PART III.

THE ASSESSMENT IS ERRONEOUS AND INVALID.

1. The Assessment of $51,163,717.00 on the Property of Complainant is an Unconstitutional Exercise of the

PAGE

Laws of the State, Otherwise Constitutional, in that the Assessment is not Made in Accordance with the Law, is Excessive and Confiscatory..... 33

2. Equality of Treatment Entitles Complainant to the Same Reduction as was Given in the Case of Other Real Estate 52

3. Capitalization of Earnings..... 70

PART IV.

FRANCHISE TAX.

1. The So-called Franchise Tax of One-tenth Per Cent is an *ad valorem* Tax and Void Because not Levied Except on Railroad Property..... 73

2. Even if the So-called Franchise Tax is Legal, Nevertheless, the Assessment is too High as the Statute Provides in the Case of Complainant that it Should Pay Fifty Per Cent of the Value..... 85

3. As a Tax for the Privilege of Doing Business this Franchise is Void as Being an Interference with and a Burden Upon Interstate Commerce, Because—.. 90

(a) It Taxes the Privilege of Engaging in Interstate Commerce 90

(b) The Receipts Derived Therefrom; and..... 90

(c) As a Tax on Property Located Beyond the Limits of the State.....139

PART V.

THE AMENDMENT OF THE FRANCHISE TAX LAW, PASSED AT THE SPECIAL SESSION OF 1921, DOES NOT VALIDATE THE TAXES ASSESSED IN THIS CASE, NOR DOES THE AMENDMENT CHANGE THE EFFECT OF THE STATUTE 150

PART VI. PAGE

THE DISCRIMINATION IS SYSTEMATIC AND INTENTIONAL 156

1. The Undervaluation of Property Other Than Railroad Property, was Intentional and Systematic.....156
2. The Methods Adopted for the Valuation of the Southern, Norfolk Southern, Atlantic Coast Line and Seaboard Air Line Were Not the Same; Did Not Follow the Statute and are Therefore, Illegal.....161

PART VII.

THE ENTIRE SCHEME OF TAXATION IS ILLEGAL 166

1. Because in Violation of the Uniformity Clause of the Constitution of the State of North Carolina.....166
2. Because in Violation of the Commerce Clause of the Constitution of the United States.....168

PART VIII.

CONSTRUCTION OF TAX STATUTES.....174

PART IX.

THE INJUNCTION SHOULD BE CONTINUED AT THE HEARING.....177

APPENDIX.

Consolidated Statutes, extracts from.....190
Machinery Act, 1921, extracts from.....192
Section 28a 192
" 28b 193
" 28c 194
" 28d 195
" 28e 196
" 28f 196
" 28g 196
Constitution, North Carolina, extracts from.....190
Revaluation Act, 1929 Extracts from.....214
Section 1 214

PAGE

" 2 214
" 3 215
" 4 215
" 5 215
" 7 216
" 7a 216
" 7b 216
" 7d 217
Revenue Act, 1921, extracts from 202
Section 3 202
" 76 202
" 77 202
" 78 203
" 79 203
" 79a 203
" 80 204
" 81 205
" 82 206
" 82 (1) 206
" 82 (2) 206-7
" 82 (3) 207
" 82 (3½) 207
" 82 (4) 208
" 82 (5) 208
" 82 (6) 208-9
" 82 (6½) 209
" 82 (7) 210
" 82 (8) 210
" 82 (9) 210
" 82 (10) 211
" 82 (11) 211
" 82 (12) 211
" 82 (13) 211
" 82 (14) 211
" 82 (15) 211-12
" 82 (16) 212
" 82 (17) 213
" 82 (18) 213
State Tax Commission, transfer of powers and duties of to Commissioner of Revenue 219

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922

NO. 382

ATLANTIC COAST LINE RAILROAD COMPANY,
Appellant,

vs.

A. D. WATTS AND A. D. WATTS AS COMMISSIONER OF REVENUE, ET AL.
Appellee.

IN EQUITY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

BRIEF OF APPELLANT.

STATEMENT.

This suit was brought in the United States District Court for the Eastern District of North Carolina to restrain the collection of taxes assessed by the Commissioner of Revenue of North Carolina upon the property in North Carolina of the Atlantic Coast Line Railroad Company,

the appellant, hereafter called the complainant. An interlocutory injunction was asked to restrain the collection of—

1. A tax of one tenth of one per cent. upon the *ad valorem* assessment of the property of complainant in North Carolina under Chapter 84, Public Laws of North Carolina, 1921, known as the Revenue Act, upon the ground that it is in confiict with the Constitution of North Carolina and the Constitution of the United States for that it is either—

(*a*) A tax upon real property when no other such tax is levied upon property in North Carolina or upon any other person or corporation, or

(*b*) If not a property tax it is a license or privilege tax upon interstate commerce based upon one-tenth of one per cent. of the value of the property, tangible and intangible, of every railroad in the State assessed for *ad valorem* taxation.

2. To restrain the collection of taxes due certain counties, cities, towns and other subdivisions for that the assessment of complainant's property upon which the tax is levied is illegal and invalid.

3. To restrain the collection of these taxes for that the entire scheme of pyramiding taxes under the tax statutes of North Carolina as a whole levies a tax and burden upon interstate commerce and violates the commerce clause of the Constitution of the United States.

The Court under Section 266 of the Judicial Code, called to his assistance two other judges, to-wit; Circuit Judge Waddill of the Fourth Circuit, and District Judge Boyd, of the Western District of North Carolina. An application for an interlocutory injunction was heard before Circuit Judge Waddill and District Judges Connor and Boyd, who denied the injunction but granted a stay for

a period of thirty (30) days, pending appeal by the complainant to this court. (Record p. 133, 136.) Later, after the record was filed in this court an additional stay was granted by the Court, pending the determination of this appeal.

This brief will be divided into nine parts, which will be subdivided under appropriate heads, and as an appendix there are printed the Sections of the Revenue and Machinery Acts of North Carolina and the Constitution and Consolidated Statutes pertinent to this case.

ASSIGNMENTS OF ERROR.

The formal assignments of error by the plaintiff will be found in the Record, beginning on page 138, but for the purpose of this brief they may be abbreviated, summarized and stated as follows:

1. The Court erred in failing to hold that the *ad valorem* assessment of $51,163,717, as fixed by the Commissioner of Revenue as being the value of the property of the Atlantic Coast Line Railroad Company in North Carolina, was invalid and illegal, because it was not made in accordance with the provisions of the Constitution and the Statute of North Carolina and the plan fixed and established by the Statute of North Carolina was not followed by the Commissioner of Revenue in fixing the assessments, and that the Commisioner of Revenue used a different plan or method in assessing the properties of the different railroads in North Carolina.

2. The Court erred in failing to hold that the manner and method by which the complainant's property was assessed and the plan of valuation followed in arriving at the assessment is illegal, and operates as an unjust and unlawful discrimination against complainant in violation of the provisions of the Fourteenth Amendment to the

Constitution of the United States, and imports into the State of North Carloina values which are elsewhere situate, and deprives complainant of its property without due process of law and denies it the equal protection of the law.

3. The Court erred in failing to hold that the uniformity clause of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States are violated by the action of the Commissioner of Revenue in declining to give to the complainant the same horizontal reduction in the value of its real property as was given to other persons and corporations under the North Carolina Statute permitting such reductions.

4. The Court erred in failing to hold that the scheme of taxation of the State of North Carolina, and the assessment of the properties of the various classes of taxpayers, is, by a settled purpose and intent, so designed and carried out that, while the property of complainant is assessed at its true value in money, the large proportion of the property in the State is assessed at less than its true value in money, thereby casting an undue and excessive burden upon complainant, in violation of the Uniformity Clause of the Constitution of the State of North Carolina and in violation of the Fourteenth Amendment to the Constitution of the United States; and that this appraisal and assessment of the property of other citizens and taxpayers has been long continued and is arrived at under a scheme of taxation which shows an intent to place an undue burden of taxation upon complainant and its property.

5. The Court erred in failing to hold that the so-called franchise or privilege tax is in truth and in fact an additional *ad valorem* or property tax upon complainant's property and, being in excess of the true value for valua-

tion, violates the Constitution of North Carolina and of the United States and is further illegal and invalid, because levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State, and the enforcement thereof deprives complainant of its property without due process of law, contrary to the Constitution of the United States.

6. The Court erred in failing to hold that the so-called franchise or privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in interstate and intrastate business, or, if imposed for the privilege of engaging in intrastate commerce, it is measured in part by the value of the privilege of engaging in interstate commerce, in that it is based upon the entire value, including values derived from use in interstate commerce, and is therefore a burden imposed upon interstate commerce and in violation of the Commerce Clause of the United States.

7. The Court erred in failing to hold that if the so-called franchise or privilege tax is imposed for the privilege of engaging in interstate commerce and is valid, it should be assessed against the complainant upon one half of the *ad valorem* value as provided in Section 82, Subsection 3½ of the Revenue Act of North Carolina of 1921, and that the tax assessed against the complainant upon the full value is therefore contrary to law and void.

8. The Court erred in failing to hold that the payment of the so-called franchise or privilege tax is exacted as a condition precedent to the right of the complainant to do "any business" in the State, whether interstate or intrastate, and is therefore unconstitutional and void.

9. The Court erred in failing to hold that the assessment made is void, in that it includes in the value used as a basis for arrival at the franchise or privilege tax the value of the property not used in the business, for which

the privilege is exacted, and such assessment and the enforcement thereof in the manner set forth violates the Fourteenth Amendment to the Constitution of the United States.

10. The Court erred in failing to hold that the tax system of the State of North Carolina, which includes an *ad valorem* tax on the full value of complainant's property in the State, including as a part thereof the value which is due to its use in interstate commerce, plus a franchise or privilege tax upon the full value of said property for *ad valorem* purposes, plus an income tax of three (3) per cent, on its net operating income, does, in practical operation result in a burden upon interstate commerce and violates the Commerce Clause of the Constitution of the United States.

PART ONE.

JURISDICTION.

1. As to Citizenship of Complainant.

In paragraph one of the bill of complaint (Record, p. 7) complainant is alleged to be a corporation of the State of Virginia and a citizen of that State, and not a citizen of North Carolina. In paragraph one of the answer, (Record, p. 47) this allegation of complainant's place of incorporation and citizenship is denied, and in addition it is averred that the complainant is a corporation under the laws of the State of North Carolina and a citizen of the Eastern District of such State. This averment in the bill and denial in the answer, therefore, raises the issue as to complainant's place of incorporation and citizenship. This question does not seem to have been raised in any other pending case.

As we view it, however, the issue so made is, as a matter both of law and of fact, immaterial to the merits of the present controversy, as the jurisdiction of this court in no way depends on the diversity of citizenship of the parties to the cause. This court has jurisdiction of the cause regardless of the citizenship of the parties under the express grant found in section 24 of the Judicial Code. This being true, the question of the citizenship of the complainant may be disregarded as not properly before the court in the instant case.

However, as the question has been raised by the pleadings, all we wish to say is that it would seem to be settled in its favor by the decisions of the Circuit Court of the United States in *Lee vs. Atlantic Coast Line Railroad Co.*, 150 Fed. 775, and of the Circuit Court of Appeals for the

Fourth Circuit in *Atlantic Coast Line Railroad Co. vs. Dunning,* 166 Fed. 850, wherein was affirmed the judgment of the lower court in the *Lee* case.

2. Amount.

In paragraph 3 of the bill (Record p. 8) it is alleged, and the answer (Record, p. 48) admits that the amount involved is in excess of Three Thousand Dollars ($3,000.00).

3. This Is Not a Suit Against the State.

This has been so held by the Supreme Court of the United States in the following cases:

Smyth v. Ames, 169 U. S., 466.
Green v. Railroad, 244 U. S., 499.
Ex Parte Young, 209 U. S., 123.

4. The taxes and assessment are in violation of the Fourteenth Amendment to the Constitution of the United States and of the commerce clause of the Constitution of the United States, as well as in violation of the Constitution of North Carolina.

The bill alleges that the taxes are levied and the assessment was made in violation of the Fourteenth Amendment to the Constitution of the United States as well as in violation of the Constitution of North Carolina (Record, p. 89). The bill alleges, and the answer admits, that the taxes are a lien upon complainant's property. It shows that complainant has no adequate remedy at law, and if the taxes were paid under protest to the various counties, cities, towns, and other subdivisions, that it will be necessary to bring a multiplicity of suits in order to recover back the illegal taxes, and, further, that there is no adequate remedy at law, and that the taxes create a cloud upon the complainant's title.

In the first place it must be borne in mind that there is no statute in North Carolina which permits a railroad to re-

cover back from the State of North Carolina any taxes illegally paid to the State. The State cannot be sued. If the taxes were paid to the counties, cities, towns, and other subdivisions, of the State, and the taxes were found to be illegal, then it would be necessary for this complainant to bring a separate suit against each and every of the separate defendants herein to recover back the illegal portion of the taxes paid.

The facts alleged in the bill bring this case squarely within the decision of *Raymond v. Chicago Union Traction Company,* 207 U. S., page 20. In that case, the Supreme Court, through Mr. Justice Peckham, held that the Court had jurisdiction where it was alleged that there was no adequate remedy at law, and that a railroad would have to bring a multiplicity of suits against each separate body to recover back the portion of illegal taxes collected and would be unable to recover any taxes at all paid to the State.

> *Cummings v. Merchants National Bank,* 101 U. S. 153,
> *Taylor v. Louisville & Nashville Railroad Company,* decision by present Chief Justice Taft, 88 Fed. 350,
> *Smyth v. Ames,* 169 U. S. 466.

The latter case further holds, page 486, that the adequacy or inadequacy of the remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a Federal Court is not to be conclusively determined by the statutes of the particular State in which suit may be brought. One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that Court; and he cannot be deprived of that right by reason of his being allowed to sue at law in a State Court on the same cause of action.

Other cases showing the jursidiction of this Court in this case are as follows:—

Green v. Louisville & Nashville Railroad Company, 244 U. S. 499,
Louisville & Nashville Railroad Company v. Green, 244 U. S. 522,
Borden's Condensed Milk Company v. Baker, 177 Fed. 906,
Wallace v. Hines, 253 U. S. 66,
Atlantic & Pacific Telegraph Company v. Philadelphia, 190 U. S. 160,
Louisville & Nashville Railroad Company v. Bosworth, 209 Fed. 380.

The bill alleges that unless these taxes are enjoined the complainant will be subject to various penalties as set forth in the bill for violation of the laws of North Carolina.

In *Wallace v. Hines,* 253 U. S., 66, the Court says:

> "The defendants are the state tax commissioner, the state treasurer, the state auditor, the attorney general and the secretary of state of North Dakota. As the tax is made a first lien upon all the property of the plaintiff railroads in the State, and thus puts a cloud upon their title, and as delay in payment is visited with considerable penalties, there is jurisdiction in equity unless there is an adequate remedy at law against the State to which the tax is to be paid. *Shaffer v. Carter,* 252 U. S. 37, *Gaar, S. & Company v. Shannon,* 223 U. S. 468."

Section 7979 of the Consolidated Statutes of North Carolina, 1919, provides that a taxpayer may pay taxes to the sheriff and sue to recover the whole of it, if illegal, or the illegal portion of it. The statute also provides that an injunction may be granted upon the taxes, or assessment, or some part thereof, if illegal or invalid, or be levied or assessed for illegal or unauthorized purposes.

The Supreme Court of North Carolina in the case of *Range Company v. Carver,* 118 N. C. 328, holds that the effect of this section is to give additional remedy to test the

validity of a tax, leaving it to the discretion of the taxpayer to sue to recover it back or to proceed by injunction.

Sherrod v. Dawson, 154 N. C. 525. See also
Purnell v. Page, 133 N. C. 125,
Lumber Company v. Smith, 146 N. C. 199.

For other authorities upon the question of jurisdiction see

National Bank v. Kimball, 103 U. S. 732,
Pelton v. National Bank, 100 U. S. 143,
Stanly v. Supervisors, 121 U. S. 535,
Western Union Telegraph Company v. Trapp, 186 Fed. 114,
Shaffer v. Carter, 252 U. S. 37.

5. Uniformity and Equality of Taxation.

The Constitution of North Carolina, Section 3, Article 5, provides:—

> "Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money. * * * The General Assembly may also tax trades, professions, franchises and incomes," etc.

Section 6 of Article 5 provides:—

> "The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose, and with the special approval of the General Assembly, which may be done by special or general act: provided, this limitation shall not apply to taxes levied for the maintenance of public schools of the State for the term required by article nine, section three, of the Constitution: provided further, the State tax shall not exceed five cents on the one hundred dollars value of property."

Section 9 of Article 7 provides:—

> "All taxes levied by any county, city, town, or township shall be *uniform and ad valorem* upon all property in the same except property exempted by this Constitution."

Whenever the Constitution of the State requires uniformity and equality in taxation these principles must be applied or else there is a denial of the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States, and this is so no matter whether it be on account of the State law itself or the administration of the law.

There was a duty here imposed upon the Commissioner of Revenue of North Carolina by the law of North Carolina in the assessments to equalize complainant's assessment with that of others by reducing horizontally its real estate, and this duty of the Commissioner of Revenue to equalize is not a matter of discretion but is mandatory and a violation of that is a denial of the equal protection of the laws.

Raymond v. Chicago Union Traction Company 207 U. S. 20,
San Mateo County v. Railroad, 13 Fed. 722,
Santa Clara County v. Railroad, 18 Fed. 385,
Cummings v. National Bank, 101 U. S. 153,
Louisville & Nashville Railroad v. Taylor, 86 Fed. 168,
Louisville Trust Company v. Stone, 107 Fed 305,
Ragan v. Farmers Loan & Trust Company, 145 U. S. 390,
Ex Parte Virginia, 100 U. S. 347,
Scott v. Donald, 165 U. S. 71.

When jurisdiction is properly attached it extends to the whole case and all issues involved, whether of Federal or non-Federal character, and the Court has authority to decide upon all the questions involved.

Louisville Trust Company v. Stone, supra,
Louisville & Nashville Railroad v. Taylor, supra.

6. The Assessment Casts a Cloud Upon Complainant's Title.

Under Section 98 of the Machinery Act of 1921, the taxes upon any and all railroads in this State, including roadbed, right of way, depots, sidetracks, ties and rails, now constructed or hereafter to be constucted, are made a perpetual lien thereupon commencing from the first day of May of each current year, against all claims or demands whatsoever of all persons or bodies corporate except the United States and this State; and the above described property or any part thereof may be taken and held for payment of all taxes assessed against said railroad company in the several counties in the State.

Section 107 also provides that no mortgage or lien on any property shall be superior to the taxes on said property, whether said mortgage or lien was given prior or subsequent to the levy of the taxes.

These two sections create a lien upon complainant's property which casts a cloud upon the title and a court of equity will interfere to prevent or remove this cloud.

Cooley on Taxation, page 780,
Shelton v. Platt, 139 U. S. 591,
Ohio Tax Cases, 232 U. S. 576,
Ex Parte Young, 209 U. S. 123,
Ogden City v. Armstrong, 168 U. S. 244.

7. Complainant Has No Adequate Remedy at Law.

The Consolidated Statutes of North Carolina, 1919, Section 7979 (see appendix), provide that an injunction shall not be granted by any Court or judge to restrain the collection of taxes nor to restrain the sale of any property for the nonpayment of taxes, *except such tax or the part thereof enjoined be levied or assessed for an illegal or unauthorized purpose or be illegal and invalid, or the assessment be illegal or invalid.*

In construing this statute, the Supreme Court of North Carolina, in *Sherrod v. Dawson,* 154 N. C. 525, at page 528, the opinion being by Mr. Justice Brown says:—

> "An injunction will lie to restrain the collection of taxes and to restrain the sale of property under distraint, for three reasons, to-wit: (1). If the taxes or any part thereof be assessed for an illegal or unauthorized purpose. (2). If the tax itself be illegal or invalid. (3). *If the assessment of the tax be illegal or invalid.* Revisal Sections, 821 and 2855. *Purnell v. Page,* 133 N. C. 125. (Italics ours.)
>
> "In the case of *Lumber Company v. Smith,* 146 N. C. 199, which was an action brought to collect taxes on solvent credits, Justice Connor, writing the opinion of the Court, for an undivided bench, held that injunction is the proper remedy as against delinquent taxes illegally sought to be collected. Upon the same point see also *Armstrong v. Stedman,* 130 N. C. 217. *Insurance Company v. Stedman,* 130 N. C. 221.
>
> "In this case the injunctive relief sought is not merely ancillary to the principal relief demanded in the action but is itself a main relief, for assuredly as to one or the other counties, the tax is illegal and invalid.
>
> "In the case of *Hyatt v. DeHart,* 140 N. C. 270, this Court held that it is the general rule that the Court will not dissolve an injunction where the main relief demanded in the action is injunctive.
>
> "In *Purnell v. Page,* 133 N. C. 129, the present Chief Justice spoke for the Court in these words 'As to the other point, whether the plaintiff can maintain an injunction against the sale of his property under an illegal tax, or must pay the tax under protest and sue to recover it back, it is equally well settled that he can pursue either remedy.'
>
> "*Range Company v. Carver,* 118 N. C. 331, *Armstrong v. Stedman,* 130 N. C. 217, and *Brinkley v. Smith,* 130 N. C. 224, hold that under the language of the statute injunctive relief may be invoked by a taxpayer when the tax is invalid or illegal."

It appears from the decision, therefore, of Judge Brown that the Supreme Court has construed this statute to mean that a taxpayer under the laws of North Carolina is given his choice either of an injunction to restrain the collection of an illegal tax, or pay the same under protest and sue to recover it back.

Subsequent to the institution of this action, by an Act entitled, "An Act to Refund Taxes Illegally Collected and Paid into the State Treasury," Chapter 96 Public Laws, N. C., Extra Session 1921, page 122, ratified the 19th day of December 1921, it was provided as follows:

> "Section 1. Whenever taxes of any kind are or have been through clerical error, or misinterpretation of the law, or otherwise, collected and paid into the State Treasury in excess of the amount legally due the State, the State Auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certificate of the head of the department through which said taxes were collected or his successor in the performance of the functions of that department, with the approval of the Attorney-General, and the Treasurer shall pay the same out of any funds in the treasury not otherwise appropriated: Provided, demand is made for the correction of such error or errors within two years from the time of such payment: Provided further, that claims which have arisen within the five years next preceding the ratification of this act shall be presented and made within two years from the ratification of this act."

It is contended by the appellees that the appellant is, by the provisions of this Act, afforded an adequate remedy at law for the payment of the taxes involved in this action. It will be readily noted, however, that the Act cited refers only to taxes paid into the State Treasury, which taxes in this case are only franchise taxes and the franchise tax is a small part of the total taxes involved in the litigation. The

Act does not purport to cover, and it is not claimed that it covers, taxes to be paid the counties, municipalities, road districts, special school districts, etc., and to these latter subdivisions of the State the greater portions of the taxes involved in this case will be paid. Likewise, the Act does not require the payment back, except upon the certificate of the head of the department through which the taxes were collected "with the approval of the Attorney-General." It may or may not be possible to secure the certificate of the head of the Department or the approval of the Attorney General. The State has not consented to be sued and therefore no remedy at law is provided by the Statute.

That the facts alleged in the bill as to the inadequacy of the plaintiff's remedy at law entitle it to the equity jurisdiction of the Federal Courts is clearly shown by the following decisions:

Raymond v. Traction Co., 207 U. S., p. 20;
Cummings v. Merchants Ntl. Bank, 101 U. S. 153;
Taylor v. Louisville & Nashville R. Co., decision by present Chief Justice Taft, 88 Fed. 350;
Smyth v. Ames, 169 U. S. 466;
Greene v. L. & N. R. Co., 244 U. S. 499;
L. & N. R. Co. v. Green, 244 U. S. 522;
Borden's Condensed Milk Co. v. Baker, 177 Fed. 906;
Wallace v. Hines, 253 U. S. 66;
Atlantic & Pacific Tel. Co. v. Philadelphia, 190 U. S. 160;
L. & N. R. Co. v. Bosworth, 209 Federal 380.

In the case of *King County v. Rwy. Co.* 196 Federal, 325, the Court says:

> "The contention that the appellee may pay the tax and thereafter recover it in an action at law does not suggest an adequate remedy, nor, indeed, any remedy at all as to a portion of the tax, for a portion of it goes to the State, and no action may be brought against the State to recover the same."

This is exactly the case which we have. This, therefore, leaves complainant entirely without any remedy at law so far as taxes paid to the State are concerned, as the law requires these to be paid direct to the State Treasurer.

8. Equity Has Jurisdiction to Prevent a Multiplicity Suits.

If complainant were required to pay taxes under protest to each one of the counties, towns, townships, and other subdivisions and special districts, to recover back the money so paid under protest, it would involve the bringing of about one hundred and twenty-five (125) or one hundred and thirty-five (135) suits—that is, a suit against each and every of the defendants in this cause, and an injunction will lie to prevent the levying of illegal taxes where the payment will subject the complainant to a multiplicity of suits to recover back.

Cummings v. National Bank, supra,
Union Pacific Railroad Company v. Colorado, 247 U. S. 282,
Sanford v. Poe, 69 Federal 546.

PART TWO.

FACTS AND CONTENTIONS.

I.

SUMMARY OF FACTS

The following facts are shown in the bill, and the affidavits in support thereof, and the admissions in the answer:

1. That the complainant is a Virginia corporation doing interstate business as a common carrier of freight and passengers, with a total mileage of 4889 miles, of which 1043 miles are in North Carolina (Record p. 7), although the State alleges that more miles than this are owned in the State (Record p. 49). No proof, however, has been produced as to this contention on the part of the State at the time of the writing of this brief.

2. That the Constitution of North Carolina provides that laws shall be passed taxing by a *uniform rule* all monies, credits, investments in bonds, stocks, joint stock companies or otherwise; *and also all real estate and personal property according to its true value in money,* and that the total of the State and county taxes on property shall not exceed fifteen cents on the one hundred dollars valuation of property except where a county property tax is levied for special purposes with the special approval of the General Assembly provided this recommendation shall not apply to taxes levied for maintenance of public schools for the term of six months, and, provided further, that the State tax shall not exceed five cents on the one hundred dollars of property. (Record, p. 9.)

3. That all taxes levied by the State or any county, town or township shall be *uniform and ad valorem upon all property* in the same except property exempted by the Constitution. (Record, p. 11.)

4. That the Commissioner of Revenue, succeeding the North Carolina Tax Commission, shall appraise the property of railroad companies and other corporations exercising the right of eminent domain, with the same powers heretofore given to the State Tax Commission. (Record, p. 10.)

5. That the Commissioner of Revenue in assessing the property of the railroads shall first determine the value of the tangible property of each division or branch of such railroad and all other physical or tangible property and then assess the value of the franchise. That in finding the value of the tangible property it shall be determined by due consideration of the cost of replacing the property with just allowance for depreciation of rolling stock, *and all other conditions to be considered as in the case of private property,* and shall then ascertain the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and, particularly by consideration of the value placed upon the whole property by the State, the physical property being deducted as evidenced by the market value of all capital stock, certificates of indebtedness, bonds or other securities, the value of which is based upon the earning capacity of the property. That the aggregate of the physical and tangible property and franchise thus determined shall be the true value of the property for the purpose of *ad valorem* taxation and shall be apportioned in the same proportion that the length of such railroad in each county bears to the entire length of such division or branch. (Record, p. 10-11.)

6. Section 65 of the Act further provides that the Commissioner shall in valuing interstate roads give due consideration to the character of the roadbed and fixed equipment, number of miles of double track, the amount of net

and gross earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State than the average value for the entire system. (Record, p. 11.)

7. FRANCHISE TAX. Section 82 (6½) of the Revenue Act provides that upon the value found for *ad valorem* taxes there shall in addition be levied a franchise tax of 1-10 of 1 per cent. This franchise tax is based purely upon the value of the property tangible and intangible, and under Section 82 (3½) it is provided that when the capital stock of a foreign company apportionable in this State is less than one-half of the value of the assessed value for taxes of all the property in this State, the amount of the franchise tax shall be calculated with reference to the sum of one-half of the total of the assessed value of the property of such corporation in this State. (Record, p. 11-12.)

8. That the said Machinery Act provides for a so-called income tax on railroads and public service corporations, calling it a net income tax, but fixes the net income as the gross operating revenue, less the operating expenses, within this State, including in such gross operating revenues in this State the equal mileage proportion within the State on interstate business and deducting from gross operating revenues the proportionate average of operating expenses or operating ratio for the whole business as shown by the Interstate Commerce Commission's Standard Classification of Accounts. From what is thus called the net operating income shall be deducted the uncollectible revenue and taxes paid in this State during the income year other than income tax and excess profit taxes, and the balance shall be determined to be the net income taxable under the act. (Record, p. 12.)

9. That the Legislature of 1921 provided for the County Boards of Review to review the valuation of real

estate and authorized horizontal reductions to be made in real estate, which were made in a number of counties in the State, as set out in the bill, but that the Commissioner of Revenue did not give to the railroads the same horizontal reductions in valuing the railroad property for 1921. (Record, p. 13.)

10. That the State Tax Commission and the Commissioner of Revenue in assessing the property of the railroad did not use or apply the method set out in the statute. It assessed the Atlantic Coast Line Railroad Company on one basis and the Southern Railway on another and the Norfolk-Southern on another, and in assessing the complainant has assessed its property outside of the State of North Carolina, and under no circumstances, and by no rule fixed in the statute can the assessment, either tangible or intangible, be supported. (Record, p. 13-33.)

II.

CONTENTIONS OF COMPLAINANT.

Upon these facts and the additional facts to be herein referred to, the complainant contends:—

1. That the valuation fixed by the Commissioner of Revenue and the assessment certified down upon such valuation is arbitrary and illegal.

2. That the so-called franchise tax is in truth and in fact not a franchise tax but an *ad valorem* tax, and, if not an *ad valorem* tax, then it is a privilege tax on interstate commerce.

3. That even if the so-called franchise tax is legal, nevertheless, the assessment is too high as the statute provides in the case of complainant that it should pay fifty per cent of the value.

4. That the entire scheme of taxation is illegal and void as being a tax on interstate commerce and as being a discrimination against the complainant and taking its property without due process of law, because all of the property, tangible and intangible, including the franchise, is taxed twice, first for local purposes, and, secondly, by the State upon the same assessment, upon which is superimposed a so-called income tax of three per cent upon the receipts derived from interstate commerce.

III.

SUMMARY OF FACTS AS TO ASSESSMENTS.

In 1920 the property of this company was assessed by the State Tax Commission at the sum of $50,867,800.00, of which $39,620,930.00 was tangible and $11,246,870.00 was intangible property. (Record, p. 62.) Complainant protested this assessment and paid these taxes under protest. (Record, p. 51.) In August, 1921, complainant was notified by the Commissioner of Revenue of the assessment of its property at the sum of $51,163,717.00, of which $39,916,847.00 was tangible and $11,246,870.00 was intangible property. (Record, p. 51.) The Commissioner of Revenue refused to advise, as did the State Tax Commission, in 1920, as to how this assessment was arrived at, the assessment for 1919, being $34,645,345.00, of which the tangible property was $51,891,000.00 and the intangible property $18,754,345.00. (Record, p. 77-78.)

The assessment of $51,163,717.00 is in excess of the true value of complainant's property in North Carolina, as such true value is provided by the laws of North Carolina to be found. As pointed out in the bill under no one of the well known plans for valuing corporations—that is, under the gross earnings or net earnings plan, or under the stock or

bond plan, or investment plan, can such figures be arrived at as fixed by the Commissioner of Revenue. The affidavit of Mr. Charles J. Joseph shows the calculations upon each and every plan. (Record, p. 75-82.)

The State Tax Commission, which fixed the assessment in 1920, which assessment the Commissioner of Revenue refused to disturb, in their report to the Government stated that they assessed the railroads upon the basis of their investment account, using the mileage proportion to determine the valuation in North Carolina and to this proportion added the value which they found to represent the intangible value of the North Carolina lines, based upon the volume of business in this State greater than the average volume of traffic on their lines as a whole. This method of valuation is in direct violation of the laws of the State of North Carolina, and any assessment so made is illegal and cannot be enforced. If, however, this figure was not used, and the valuation was figured on the net income, still the valuation is excessive and in excess of the true amount which should be apportioned to this State. The figures reported to the Commissioner of Revenue and the State Tax Commission in response to a request, which figures are based upon the accounting methods of the Interstate Commerce Commission, did not reflect the true amount of the earnings in North Carolina, for as shown in the affidavit of Mr. Prince (Record p. 101-105), in the operating revenues, no deductions, adjustments, or allowances are made or allocated for handling, loading, unloading, and other terminal costs incident to the handling of the trans-state traffic—that is, traffic originating, say, in Florida, and going to New York and passing through North Carolina. Mr. Prince's affidavit further shows that approximately three-fourths of the total operating revenues allocated to the State of North Carolina and derived from interstate busi-

ness; and that according to a test of four months business made in November, 1921, it was developed that of all freight traffic handled in North Carolina fifty-four per cent consisted of trans-state traffic, having neither origin nor destination within said State, and that said trans-state traffic consisted largely of such high class revenue producing commodities as fruits, vegetables, strawberries and other perishable products which are handled in special equipment such as refrigerator and ventilated cars which cars are moved in fast freight service, and that the cost of handling said perishable traffic, considering initial and terminal service incident thereto, is largely in excess of the average cost of handling all business of this complainant and that in crediting North Carolina the straight pro-rate of this revenue on such traffic without any deduction for assembling, terminal and handling charges in connection therewith, and in charging to North Carolina only a ratio of operating expenses applicable to the business of the entire lines, results in allocating to North Carolina a net revenue in excess of that which is actually earned within said State.

Thus the Commissioner of Revenue and the State Tax Commission in assessing the property of this company used the ratio of operating expenses to earnings which was much less than for the entire system and resulted in the over-assessment of the property of this complainant. These various methods of capitalization and the results therefrom are set forth with particularity in Mr. Joseph's affidavit. (Record p. 75.)

In addition to this the Legislature of 1921, permitted horizontal reductions to be made in real estate. These reductions were made in various counties throughout which this railroad runs, as set forth particularly in the bill and admitted in the answer. (Record p. 17-18 and 51.) In four of the counties through which the lines of this railroad run

there was no reduction, and in all of the other counties there were reductions extending from ten to fifty per cent. The average reduction in valuation throughout these counties was 26.11 per cent, but in addition to this there was an average increase of the rates in these counties amounting to 104 per cent. (Record p. 19 and 51.) This complainant contended that it was entitled to have all of its real property reduced to the same extent as was the real property of the citizens in these various counties. It obtained reductions in these counties upon property which it owned and which was not assessed by the Commissioner of Revenue, and he refused to extend to the complainant the reduction to which it was entitled which has the following result:—

In Edgecombe County, for instance, the assessment of real property was reduced 50 per cent. The tax rate was increased 134 per cent. This means that the citizens of Edgecombe County having real estate will pay for the year 1921, due to the increase in rate and decrease in assessment practically no more taxes than in 1920, while this complainant will pay, due to the increase in rate of taxation and the refusal to decrease the assessment, an increase in taxes in Edgecombe County of approximately 134 per cent. This same result obtains throughout the entire system of this railroad in North Carolina. The defendants contend that railroad property was not depressed but that farm property was depressed. Complainant showed to the Commissioner of Revenue, and the record in this case shows that complainant's net operating revenue, less taxes in the State of North Carolina, in 1916, was $3,161,042.16, while in 1920 it fell to the sum of $795,493.78, or a decrease of $2,365,548.38, or 74.81 per cent, while the ratio of operating expenses and taxes to operating revenue increased from 69.41 per cent in 1916 to 97.36 per cent in 1920. (Record p. 29-30 and 63.) Complainant further shows that cotton, leaf tobacco, fertilizer and

29

lumber fell off in movement over its line, and these products bring in large revenue to the complainant; that the falling off in farm products was reflected in the revenues of this complainant. Complainant further shows from the statement attached to the affidavit of Mr. Prince that the total income for the twelve months ending August 31, 1921, was only 2.17 per cent return on its investment. (Record p. 153.) Its net operating revenue in 1919, in North Carolina was $2,087,-975.05, while in 1920, it dropped to $795,493.78. (Record p. 29.)

We give below a table showing the valuation of this company's property under all of the known and recognized rules taken from the bill and affidavits filed in this cause none of which evidence is denied by the State in its answer or affidavits. The calculations shown take in all of the various elements which the State Tax Commission or the Commissioner of Revenue could possibly have taken into consideration under the statute. In the compilation of these figures no property outside of the State, the value of which has been imported into the assessment, has been deducted.

In other words, the tables below are figured on the investment account of the company as set forth in the bill and upon the earnings, market value of its stocks and bonds, the par value of its stocks and bonds and of the compensation paid by the Federal Government from 1917 to 1920. There should necessarily be deducted from these figures the difference between the value in other States and the value in North Carolina as set forth in the case of *Wallace v. Hines,* 253 U. S. 66. There should be deducted the large and valuable terminals and other property outside of North Carolina which has no bearing whatsoever on the property inside of North Carolina. The table is as follows:

On Average Net Earnings, less Taxes, entire system for four years, 1915 to 1918, inclu-

sive, capitalized at six per cent, and allocated to North Carolina on operated mileage basis, the valuation should be $39,729,023
(Record, p. 90.)

Capitalized at seven per cent, the valuation should be 34,053,445

Capitalized at eight per cent, the valuation should be 29,796,767

On the Par Value of its capitalization, stock, bonds, etc., May 1, 1919, allocated to North Carolina on a basis of miles owned, the valuation should be $38,628,301
(Record, p. 77.)

On the Market Value of its capitalization, stock, bonds, etc., May 1, 1919, allocated to North Carolina on a basis of miles owned, the valuation should be $34,551,233
(Record, p. 77.)

On the Federal Compensation, less Corporate Expenses, and Taxes, year 1919, allocated to North Carolina on basis of miles operated, the valuation should be $34,106,346
(Record, p. 99.)

The Property Investment, Book Value Material and Supplies, less accrued depreciation as of May 1, 1919, allocated to North Carolina on a basis of miles owned $40,330,357
(Record, p. 77.)

On Average Net Operating Revenue, less Taxes, entire system for five years, 1916 to 1920, inclusive, capitalized at six per cent, and allocated to North Carolina on basis of operated miles, the valuation should be $32,279,413

Capitalized at seven per cent, the valuation should be 27,668,068

Capitalized at eight per cent, the valuation should be 24,209,650
(Record, p. 28.)

On Average Net Operating Revenue, less Taxes, State of North Carolina, for five

years, 1916 to 1920, inclusive, capitalized at six per cent, the valuation should be $41,730,199

Capitalized at seven per cent, the valuation should be 35,768,742

Capitalized at eight per cent, the valuation should be 31,297,649

(Record, p. 29.)

On Par Value of its capitalization, stock, bonds, etc., on May 1, 1921, allocated to North Carolina on a basis of miles owned, the valuation should be $41,150,362

(Record, p. 30.)

On the Market Value of its capitalization, stock, bonds, etc., on May 1, 1921, allocated to North Carolina on a basis of miles owned, the valuation should be $33,696,925

(Record, p. 64.)

The Property Investment, Book Value Material and Supplies, less accrued depreciation December 31, 1920, allocated to North Carolina on a basis of miles owned, the valuation should be $36,227,090

(Record, p. 81.)

PART THREE.

THE ASSESSMENT IS ERRONEOUS AND INVALID

I.

THE ASSESSMENT OF $51,163,717.00 ON THE PROPERTY OF COMPLAINANT IS AN UNCONSTITUTIONAL EXERCISE OF THE LAWS OF THE STATE, OTHERWISE CONSTITUTIONAL, IN THAT THE ASSESSMENT IS NOT MADE IN ACCORDANCE WITH THE LAW, IS EXCESSIVE AND CONFISCATORY.

This question involved is none the less serious because, while not questioning the right of the State, within constitutional limitations, to impose a proper tax, we are questioning the scheme of assessment as an unconstitutional application by the tax officers of the State to complainant's property, the otherwise valid tax laws of the State.

Since the question involves the taxing power of the State, we should be fair and give the State the benefit of the doubt in this and in each instance of our objection to the various forms of taxes as applied to complainant.

Generally speaking, we do not have to go beyond Section 3 of Article 5 of the Constitution of North Carolina, which provides:

> "Sec. 3. *Taxation shall be by uniform rule and ad valorem: Exemptions.* Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise;

and also all real and personal property, according to its true value in money * * * The General Assembly may also tax trades, professions, franchises and incomes." etc.

If this constitutional provision had been given full consideration, complainant would have no occasion to contend that the assessment for *ad valorem* purposes or for any other legitimate levying of taxes, is excessive. We are not contending that the law passed in pursuance of this constitutional provision, which is the method of assessment fixed by Section 64 of the Machinery Act, is unconstitutional, but, that its application by the tax officers of the State in assembling the assessment complained of, is an unconstitutional and illegal exercise of what is otherwise a constitutional statute. Section 64 of the Machinery Act of 1921, Public Laws of N. C., 1921, page 265, provides for this assessment, as follows:

"(a) At such dates as real estate is required to be assessed for taxation, the said commission shall first determine the value of the tangible property of each division or branch of such railroad of rolling stock and all other physical or tangible property. This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property.

"(b) They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property.

"(c) The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an *ad valorem* taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certify, on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city, or town; all taxes due the State from any railroad company shall be paid by the treasurer of each company directly to the State Treasurer within thirty days after the first day of July of each year; and upon failure to pay the State Treasurer as aforesaid, he shall institute an action to enforce the same in the county of Wake or any other county in which such railroad is located, adding thereto twenty-five per centum of the tax. The board of county commissioners of each county through which said railroad passes shall assess against the same only the tax imposed for county, township, or other taxing district purposes, the same as is levied on other property in such county, township, or special taxing districts."

There is no significance in fixing first the value of the tangible property separately except for the purpose of fixing the entire value, which is the intangible value added to the tangible value. Both values, although separated for this purpose, constitute the entire value. The scheme of taxation seems to be, therefore, that the tangible and intangible property shall be the entire value of the property for *ad valorem* taxation, the tangible value being separated for a possible and probable tax to be levied on it alone.

Under this scheme of taxation it is admitted for purposes of argument that a proper assessment for an *ad valorem* tax or the ascertainment of value of railroad property is more or less than the intangible value in different cases. For instance,

we can conceive of a railroad, which by reason of a costly investment account, costly construction and expensive operation, having a large tangible value and yet a low intangible value, because of low earning power. Likewise, we can conceive of a road, fortunately located, inexpensive construction, low investment account and conditions of operation, which will at the same time have an earning power equal to the first mentioned road and that the values of the road for purposes of taxation will be the same. This condition would apply where mere tangible or physical value alone is not the subject of taxation, as seems to be the rule in the State of North Carolina, as prescribed in Section 64 of the Machinery Act.

Tangible value can be seen and assessed separately from intangible value, but intangible value cannot be seen and assessed separately from tangible property. In order, therefore, to assess the entire value, which is a combination of both, some method must be used which in one application will determine both the tangible and intangible value from which deducting the tangible value, assessed separately, the intangible value will be for the first time ascertained.

If these premises are true, there is only one known method of ascertainment of intangible value, and it is the method of capitalizing the net earnings of the railroad or assessing the stock, bonds and certificates of indebtedness and securities of the road, and subtracting from this the already ascertained tangible value and if the subtraction leaves no result there is no intangible value. There may be other methods of assessment, but to be legal and just they invariably embrace the principle involved in the above stated methods.

Under an Act of the General Assembly in the year 1919, (Chap. 84, Public Laws, N. C., p. 115), the property, real and personal and mixed of every citizen of the State of North Carolina, was ordered to be re-valued at its true value in money and in accordance with section 31 of said Act the

State Tax Commission of North Carolina was ordered to make a complete revaluation of the property of all railroads, to be used as a basis for computing taxes for the years 1920, 1921, 1922 and 1923, although the Chairman of the State Tax Commission stated that prior to the revaluation, complainant's property was already assessed at 85 per cent of its actual value relative to other property. (Rec. fol. 114 p. 77.) In 1920, after the revaluation the property of complainant was assessed at $55,929, 629, which after protest and hearing was reduced to the sum of $50,867,800. (Rec. p. 77.) The assessment so fixed was protested and the taxes paid under protest.

In the year 1921, when under the changed law (Chap. 38, Public Laws, N. C., 1921), the Legislature of North Carolina authorized a horizontal reduction in real property, to be effective in the year 1921, and Atlantic Coast Line Railroad Company made application for a reduction in its original assessment, and also on the ground that by reduction of net income allocated to North Carolina from $3,161,042 in 1919, to $795,493 in 1920, and other factors, it decreased the earning power of the road and necessarily its value as made up by its tangible and intangible assets, defendants notified complainant that its assessment for the year 1921, was $51,163,717 or an increase of $295,917 over the assessment of 1920. (Record p. 80.)

It is unnecessary, in an argument such as this, for the purpose of a interlocutory injunction, to do more than state the salient facts, in order to make clear the general principles of complainant's contention. Suffice it to say that in the assessment of the property of complainant in 1920, at approximately $50,000,000 and in not reducing the assessment in 1921, below that sum, the taxing power did not consider the factors set forth in the bill through affidavit, which greatly decreased the value of plaintiff's property, regardless of the revaluation at true value for that year.

In complainant's bill it is alleged that if the method prescribed in Section 64 of the Machinery Act had been followed, the assessed value of complainant's property would have been truly ascertained and it is alleged that the only true method was to capitalize the net income or the method of valuing the stock and bonds and allied securities. (Record, p. 27-31.) The answer of the defendants admits that these were correct methods and the figures stated correctly in the bill, and they were followed, but that other methods, undisclosed, were also followed. (Record p. 63-64.) Therefore, if left to the answer for any proof offered by defendant on this question, it would be impossible to ascertain the method that was followed. However, in the report of the State Tax Commissioner to the Governor of North Carolina, dated August 10, 1921, appearing in the affidavit of C. J. Joseph, Tax Officer of complainant (Record p. 79), it was stated that the Commission valued complainant's property in North Carolina by applying to the State of North Carolina a mileage proportion of complainant's investment account and adding an amount to represent the intangible value of their North Carolina lines, based upon the volume of business in this State, greater than the average volume of traffic on their lines, as a whole. (Record p. 79.) It is clear, therefore, that the tax officers of the State did not follow the rule laid down in Section 64 of the Machinery Act, but merely took the investment account as filed before the Interstate Commerce Commission for valuation for rate making purposes, as ascertaining the tangible value and then merely added an amount in excess of $11,000,000, which was supposed to represent the intangible value, to make up the assessment of approximately $50,000,000. We speak of the assessment as approximately $50,000,000 because there are certain deductions in the bill which the defendants admit should be deducted, leaving the assessment approximately

$50,000,000. (Record p. 51.) We say that this method of assessment was improper because based on the investment account which alone can determine (though improperly in this case) tangible value, but which furnishes no opportunity of ascertaining the intangible value, except by mere guesswork.

We contend that while tangible property can be assessed separately, intangible property cannot be assessed separately, but to arrive at the entire value, tangible and intangible, the entire property must be assessed by the method described in Section 64 of the Machinery Act and this is by capitalizing the net income or the stock and bond method, which alone furnishes a method of arriving at the intangible value by deducting from the entire assessment the tangible value.

Had the tax officers of the State considered the proof offered and admittedly correct, the value of complainant's property in North Carolina could not have been assessed on the par value of stocks and bonds more than approximately $38,000,000 and on the market value of stocks and bonds at approximately more than $34,000,000 and by capitalizing the net operating revenues less taxes at six per cent at more than approximately $34,000,000 and if upon the capitalizing of compensation under the Federal Control Act at approximately more than $34,000,000 (Record, p. 77), and any method of assessment just described, includes both tangible and intangible value, which is the entire value, and except upon mere surmise can the intangible value be determined unless some of these methods are adopted.

A mere statement of figures in argument is confusing. This should be left to the proof which furnishes statement in detail. It is sufficient to say that tested by any known method which will ascertain tangible and intangible value, the assessment of complainant exceeds the true value by ten to eighteen million dollars. The complainant is not in

the position of contending that its property should be assessed on any one element of value. It admits that as a part of this value its value as a going concern should be included. It admits that this value is increased by reason of the fact that it is a through line, going through several States other than North Carolina. It admits that its property in North Carolina can be taxed as an instrumentality of interstate commerce because of the added value that comes to it from its participating in interstate commerce, but that to arrive at its value other than mere tangible value, which involves a consideration of all of the elements above stated, only its earning capacity or the value of its stock and bonds, based upon its earning capacity, can be considered. The details furnishing a basis for critical determination of value are furnished by the proof and have no place and argument unless the proof is in dispute and in this case there can be no dispute which will embarrass the Court in deciding the general principles involved.

Since the assessment of the value of the property of the taxpayer is the basis of taxation, we realize that this allegation of our bill is most important, since the amount of the levy of the various kinds of taxes imposed are but incidental to this question. We trust that we can make the argument sufficiently clear to convince the Court that we are not indulging in any new theory, not justified by the authorities, in our claim that the assessment for 1920 and 1921 is an illegal, confiscatory, unjust and discriminatory assessment—not as a theoretical proposition, but tested by the mandate of the Constitution and the laws of North Carolina, and when we speak of the laws we are speaking of Section 64 of the Machinery Act, which authorizes and directs the assessment. We contend that if the tax officers of the State had followed this statute we would have no complaint as to an excessive, unjust and discriminatory as-

sessment. Before giving an analysis of the statute which we contend proves our view in every respect, we will first illustrate in a simple way our contention. Take an operating railroad, assumed to be worth five dollars. Its physical or tangible value is worth five dollars and can be assessed separately from any other value incident thereto. The first that can be seen and ascertained is tangible value, and the other which cannot be seen is intangible value. If the revenue derived from net operation amounts to sixty cents and we capitalize this on a six per cent basis, sixty cents divided by six shows a value of $10.00. We thus have the entire value—$10.00, and while it is possible to obtain the physical or tangible value by itself, it is impossible to obtain the $10.00 value except by this method, which shows the intangible value of $5.00 when the $5.00 tangible physical value is subtracted from the general result, showing a difference of five dollars. A continuation of this illustration is as follows: If the physical value of a road was found to be $10.00 and its net earnings derived from operation amounted to sixty cents and it was capitalized in the same way as above, its value would be $10.00 and in subtracting the $10.00 physical value from the result it would leave no intangible value, and the entire value for taxation of railroads would be entirely physical value, which is not authorized by Section 64 of the Machinery Act.

Our contention is that this is not merely an assumed theory, but that it is the sole method of assessment authorized and required by Section 64 of the Machinery Act. When we say the sole method we mean that it includes the stock and bond method, which is the valuation of the stock, bonds and allied securities which brings practically the same result, and includes any other method which brings the same result. It is unnecessary to illustrate the situa-

tion, except by the net income method above shown. A justification of our position is an analysis of the statute heretofore quoted in full. It is evidently the legislative intent to tax more than the physical value within the above illustration when in the one case the road has intangible value in addition to physical value. It is also the legislative intent in the other case to tax only physical value when the road has no intangible value, or less than physical value when the net earnings capitalized on a proper percentage basis shows that the value of the road in terms of tangible and intangible value is less than the physical value.

Lest at this stage the Court might understand we are assuming the six per cent as the proper sum to capitalize the net earnings, we are only using this for the purposes of illustration, because we contend that in order to ascertain value on the capitalization of net earnings we should use the prevailing rate of interest, and as the prevailing rate of interest during the period of assessment was more than six per cent, the percentage used should be at least seven per cent, and probably as high as eight per cent. At least, the highest value should not be obtained by taking the lowest rate of interest which railroads had to pay in operating, and possibly not the highest, but, in the interests of a relatively equal assessment, at least the mean of the rate prevailing should have been used, otherwise the result would be to obtain by the lowest rate, the highest value possible under the circumstances. It is shown in paragraph 30 of the bill and not denied in the answer that the prevailing rate of interest in North Carolina actually paid by the railroads and all other industries was greater than the sum of six per cent. (Record, p. 29-64.) The higher rate, of course, on this plan, tends to a lower valuation. The lower the percentage divisor into net earnings, of course, necessarily the greater result.

Analyzing Section 64 of the Machinery Act:
Section (a) provides:

> "* * * The said commission shall first determine the value of the tangible property of each division or branch of such railroad of rolling stock and all other physical or tangible property. This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property."

This physical or intangible value must be determined separately, and as we have stated, it can be seen and determined separately. Section (b) then provides:

> "(b) They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses. * * *"

This means, of course, as to intangible value, that they shall take the gross earnings and compare them with operating expenses, and then take the net income derived from operation. Now at this stage, this simply means that they shall take the net income and divide it by a proper rate of interest, to capitalize it, and then from the result subtract the physical value previously ascertained, and the result is the intangible value, and both combined constitute the entire value for taxation.

In Section (b) there is an alternative method bringing the same result, because it shows:

> "* * * by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the

value of which is based upon the earning capacity of the property."

This is nothing but the stock and bond method, that is, by taking the prevailing value of stocks and bonds, which is the value of the property placed by the public in buying and selling it, from which the entire value is obtained, and deducting the physical or tangible value previously ascertained, leaves the intangible value, both combined being the ascertainment of a proper value for taxation. In Section (c) it is stated the assessment is for *ad valorem* taxation, but a discussion of any part of our bill which is controlled by this language should not be mixed with our argument on the question of ascertainment of the value of the property for the general purpose of taxation.

It will be observed that value so obtained or obtained by any other proper method is system value, and such part of the value of the system as is apportioned to the State of North Carolina on an operating mileage basis is regarded free from objection because it is an average value, subject to argument below.

And, while it has been held by numerous decisions of this Court that interstate business cannot be burdened with taxation, nevertheless. an instrumentality of interstate commerce can be taxed in this manner; that the true value of the property so engaged in interstate commerce is taxed properly by this method.

It is also clear that, if the gross income or a proportion thereof on a mileage basis of the entire system is taxed, this constitutes a burden on interstate commerce.

Therefore, in framing Section 64 of the Machinery Act, generally speaking, certainly as a basis of obtaining true and entire value, the framers of this statute made

a perfect map for the guidance of the taxing powers of the State and it is simply a question as contended for by us of the taxing powers disregarding its mandate.

There is another rule that should be observed, and that is, before any value is apportioned to a State as its mileage portion of system value, if there be in another State property of the corporation, not common to the State imposing the tax, of such a nature that while it enhances system value, it is not peculiar in adding value to the State of taxation, it should be deducted. To do otherwise it to import values from other States for purposes of taxation.

This is in no wise contending that the instrumentalities of interstate commerce by system value properly apportioned cannot be taxed. It is well settled by the decisions of this court that common carriers engaged in interstate commerce may be taxed upon their properties within a State valued at such a proportion of the whole value of the capital stock as the length of the line within the State bears to the length of its lines everywhere, deducting the value of real estate and other properties subject to local taxation within the State, notwithstanding the fact that nothing is in terms directed to be deducted for the value of real estate and other property situated and taxed in other States, unless there is something otherwise showing the system of taxation oppressive and unconstitutional. The true value of the line of railroad for taxation in the State is more than an aggregation of the value of separate parts of its operation separately. Whatever of value there may be resulting from a continuous operation of the road is partly attributable to each State in which it operates and each such State has an equal right to reach after a just proportion of that value. Un-

der ordinary conditions the taking of a mileage share of all such value is not a taxing of property outside the State, but there are cases, as, for instance, where the terminal facilities in other States are of enormous value, and of little value in the State where the tax is laid when the proportional mileage basis cannot constitutionally be applied. A State cannot tax the privilege of carrying on commerce among the States, neither can it tax property outside its jurisdiction belonging to persons domiciled elsewhere. The injustice of assuming the value to be evenly distributed according to main track mileage is plainly illustrated in the case of *Wallace v. Hines,* 253 U. S. 66, 64 L. Ed., 782. Other cases sustaining the rules mentioned are as follows:

Western Union Tel. Co. v. Taggart, 163 U. S., page 1.

Adams Express Company v. Ohio State Auditor, 165 U. S. 194, 41 L. Ed., 683.

The Cleveland, Cincinnati, Chicago & St. Louis Railway Company v. Backus, 154 U. S. 439, 36 L. Ed., 1041.

Fargo v. Hart, 193 U. S. 490; 48 L. Ed., 762.

That this is a live and controlling question in this case and is not merely a theory of assessment that might or might not be observed in the discretion of the taxing powers, we call the Court's attention to Section 65 of the Machinery Act, which contains the following provision:

> "Provided, the Commission shall, in valuing the fixed property in this State, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State than the average value for the entire system."

It was, therefore, incumbent upon the taxing power, had it followed the statute, to have given consideration to this provision and have credited the earning power of property outside of the State peculiar to the outside State and not existing in the other.

We are making this contention in the instant case of request for injunction, but this is a showing which should be made when the case is determined on the merits.

Therefore, urging that before the net earnings obtained for capitalization are distributed for mileage in the different States, the outside property should be deducted, we propose to show that, under any proper method of ascertaining value, and under any proper observance by the taxing authorities of the mandate of Section 64 of the Revenue Act, complainant has been discriminated against by a grossly unfair assessment of its property for taxation in violating all the constitutional provisions both of the State of North Carolina and of the United States, alleged in the bill.

In 1919, the property of complainant (paragraph 6 of the bill) (Record, p. 13) was assessed at	$34,645,345
of which the tangible property amounted to	15,891,000
and the difference or intangible property,	$18,754,345

At this time the Chairman of the Tax Commission (Record, p. 77) stated that the property of complainant was taxed at 85 cents on the dollar.

When and after the law required all property to be valued at its true value as a basis for computing taxes for 1920, 1921, 1922 and 1923, the assessment was made for 1920, as follows:

Entire assessment, ... $50,867,800
of which the tangible was 39,620,930

and the difference, or intangible $11,246,870
(Record, p. 13.)

Had the Tax Commission pursued the proper method of assessment by taking the net operating revenue, which did not include the year 1919 in the average of the preceding years, the average would have been considerably reduced, because while in 1918 and 1917 and 1916 the average system net earnings exceeded $11,000,000, in 1919 it was below $7,500,000 and in 1920 below $2,000,000. (Record, p. 29.)

Before certifying the assessment there was a considerable credit allowed for reasons foreign to this argument, and which it is needless to refer to. This assessment of 1920 was duly protested, yet the taxes were paid thereon under protest.

The assessment of 1921 was as follows:

Total value $51,163,717
of which the tangible value was 39,916,847

leaving the difference, or intangible value $11,246,870
(Record, p. 22.)

The assessment of 1921, which is the subject of complainant's contention set forth in the bill, was a repetition of the assessment of 1920, because evidently on the same basis and with the same disregard to the rights of complainant as heretofore set forth. In making the assessment for 1921, the net earnings of complainant from operation had been reduced to $1,836,000 from the $7,500,000 of the previous year, and from the sum of $11,000,000 from the previous three years. (Record, p.

25.) This decrease in earning power, and many other factors, lessened the value of complainant's property in 1920, which is practically the same as the assessment for 1921, as against previous years, and shows that, in fixing the assessed values for the years 1920 and 1921, the earning power, which constitutes the basis for assessment of the value of complainant's property, was not considered, and it was the duty of the Tax Commission, not only to consider it, but to be governed by it.

In the interval between 1919 and 1920, property of everyone was supposedly listed at its true value, railroad as well as other property, and what seems to be complete proof of discrimination and unfairness in the original assessment of complainant's property in 1920 and 1921, as compared with other property in the State, is that complainant's property was admittedly assessed in 1919 at 85 per cent of its full value, according to the statement of the Chairman of the Tax Commission. This being true, by a revaluation to true value, if the Tax Commission had even casually observed the mandate of the Legislature in Sections 64 and 65 of the Machinery Act, it could not have increased the figure of 1919 to the figures of 1920 and 1921. There were errors in the assessment of 1921 when it included figures of $297,917 and figures of $78,-601, a total of $376,518, as alleged in paragraphs 19 and 22 of the bill (Record, p. 22-24) and admitted in the answer (Record, p. 55-57), which need not be referred to for any practical purpose in this argument, except that until the bill was filed, no disposition was shown to correct it.

Assuming that we have shown that the Tax Commission should have followed the method of capitalization of net income at a proper percentage, or the stock and bond method, or any other allied justifiable method, the highest assessment that could have been arrived at for the year 1921

was from ten to eighteen million dollars less than the sum of approximately fifty million dollars, the amount found by the taxing power of the State.

To summarize, in assessing the property for 1920 the Commission stated that it took the average for four years value 1915-16-17-18. In these years the net income of the system exceeded $11,000,000. In 1919 it was slightly in excess of $7,500,000, and in 1920 has fallen as low as $1,836,426.

We, of course, cannot finally succeed on the merits, unless the proof will bear out the statements of these figures as the general result. Practically no statement in our bill as to calculations is denied. Complainant shows the tangible value of this company's property was fixed by the State Tax Commission in 1920 as approximately $39,000,000, and the intangible value at approximately $11,000,000, (Record, p. 13), and if the aggregate value of the tangible and intangible property of this company was attempted to be fixed on an earning basis for the four years from 1915 to 1918, inclusive, and North Carolina's proportion of it on a mileage basis, the total assessed value would amount to only $39,000,000, which would leave an intangible value of only approximately $129,000. (Record, p. 81.) If for the same period it had been fixed under the stock and bond basis and allocated to North Carolina on the market value of the stock and bonds as of May 1, 1918, the value of the same would be approximately $38,000,000 (Record, p. 81) and which would leave no intangible value and if the stock or bond plan or any other plan was used, and the proportion of complainant's property located outside of North Carolina, which is not used in its business as a carrier in operating the property in North Carolina, had been deducted, there would be left a much smaller general assessment. If the assessment had

been passed upon Federal compensation received, the true assessment would have been approximately $36,000,000 or approximately $3,000,000 less than the assessed value of tangible property. (Record, p. 81.) When we consider, however, that the net operating revenues of the company decreased in 1921 materially from what they were previous to the year 1919, our contention is obviously correct that this great decrease should have been taken into consideration and that if the capitalization of net earnings was based on an average of years from 1915 to 1920 the result would have been $32,279,413, which would have left no intangible value. (Record, p. 82.)

Obviously our contention is correct when we show that the only true method of assessing the value of property is provided by the laws of North Carolina and that the Tax Commission has not followed this law. It has violated, not only the statute law, but the Constitution of North Carolina in providing for equal taxation, which means an equal relative assessment, and the Constitution of the United States preventing interstate commerce from being burdened and the Constitution of the United States guaranteeing due process of law and the equal protection of the laws. A careful review of the admissions of the answer and the admission of the correctness of the figures stated in the bill, will show that in making this assessment, which, until corrected, is operating on complainant today, the Tax Commission, as stated in its annual report to the Governor, based the assessment "upon a mileage proportion of the investment account, which they have asked the Interstate Commerce Commission to adopt for making their rates and to this mileage proportion, we have added the value which we find to represent the intangible value of their North Carolina lines, based upon the volume of business in this

State, greater than the average volume of traffic on their lines, as a whole." (Record p. 78, 79, 122.)

They, therefore, undertook to base their assessment of tangible values separately upon an investment account shown by a statement to the Interstate Commerce Commission required for the wholly different purpose of ascertaining the value for rate making and found this figure at approximately $39,000,000 for both the years 1920 and 1921, and as no proper method was adopted for the assessment of intangible property, the amount of $11,000,000 so found was necessarily found by simply assuming the figures without any proper basis for the assumption in order to reach an entire assessment of $50,000,000 in round figures.

On the question of preliminary injunction, an analysis of the statute and general principles of law governing in connection, admitted calculations are quite sufficient to show that the method of assessment adopted was vicious in itself and certainly on any method of assessment which could pass the sanction of the law governing, the assessment of $50,000,000 exceeds the true assessment which should have been imposed in the assessment for 1920, and 1921, by over ten to eighteen million dollars. The law being once decided, the calculations of the amount of assessment which should be allowed should be left to an appropriate method of investigation on the permanent hearing.

II.

EQUALITY OF TREATMENT ENTITLES COMPLAINANT TO THE SAME REDUCTION AS WAS GIVEN IN THE CASE OF OTHER REAL ESTATE.

The assessment of the property of complainant being for the purpose of *ad valorem* taxes to be collected only by

counties, municipalities, and special districts, fixed by the Commissioner of Revenue, and referred to the said counties, municipalities and special districts, on a mileage basis, as a part of the whole, and the county assessors having horizontally reduced the value of real estate in said counties, which real estate goes to make up the whole of the general assessment for *ad valorem* purposes of railroad property, such general assessment as may be generally declared by this Court to be legal as an original proposition should be reduced as a whole by the average reduction of the assessment of real estate in the said counties, municipalities and special districts, and the failure to do this is an unconstitutional exercise of power otherwise valid.

After the Revaluation Act, the property and the apportionment thereof, in North Carolina, was supposed to be assessed at its true value, although this was not done as we will hereafter show.

The Revaluation Act was passed in 1919. (See Appendix.) In March, 1921, the Legislature of North Carolina authorized what is generally known as horizontal reductions in North Carolina (Appendix), that is to say, it gave authority to the tax assessors in the counties to reduce the values in these counties an average percentage. Acting under this authority the valuations and assessments of real estate in the thirty (30) counties through which this complainant's railroad runs, was reduced on an average of 26.11 per cent by horizontal reductions. (Record p. 19 and 51.) The commissioners did not revalue the property in those counties as a whole but applied a percentage reduction in the counties and cities, none of which were equal or in any way alike. One county reduced 10 per cent, one county reduced 50 per cent, etc. (Record p. 20-21.) Counties adjoining each other, and lands adjoining each other, were not reduced the same percentages. The same class, character and quality of land,

of the same soil, and producing the same crops, were reduced different percentages. The act of the Legislature authorizing these reductions in valuation authorized reductions on real estate. This reduction was not limited to real estate owned by individual persons and corporations, other than railroads, for if it had been it would be such a rank discrimination that the Court would declare it invalid upon its face. It must, therefore, be clear that it was the intention of the Legislature that all real estate situated in the various counties, regardless of ownership, should receive the same horizontal reduction.

This complainant, and other railroads, petitioned under the act for a like reduction of all its real property. The Commissioner of Revenue arbitrarily refused any reduction whatsoever upon the ground that he had no authority to do so, and upon the further ground that railroad property had not reduced in value (Record p. 22 and 52), although all the evidence before the Commissioner of Revenue was absolutely contrary to his finding, and, in fact, there was no evidence before the Commissioner of Revenue except that offered by the railroads. It must be borne in mind that the assessment of 1920, was based upon the value as of May 1, 1919. (See Statute in Appendix.) The State in its answer admits the horizontal reduction (par. 17, answer Record p. 54), and admits all the facts and figures set up by the complainant, showing in particular those horizontal reductions throughout the counties through which it operates its railroad. (Par. 12 Bill Record p. 17 and par. 12, answer Record p. 51.) Therefore, it would seem to us, when we have the horizontal reductions in the counties admitted, that without argument or citation of authority, our contention in this respect should be admitted.

The Constitution of North Carolina providing uniformity of taxation, and the Constitution of the United States for-

bidding the burdening of interstate commerce and guaranteeing due process of law and the equal protection of the laws, would seem to suggest the legal requirement of allowing the same reduction to all taxpayers from the equal assessments on each previously made.

We respectfully submit that the contention of the defendants that the value of real estate privately owned was assessed relatively higher, and that the reduction on real estate privately owned was to bring it to its true value, while the railroads on the other hand were not overvalued, is absolutely unsound.

We cannot imagine, unless incontrovertible truth should be brought forward, that the taxing system of the State could be so applied at any time as to tax real estate of private owners at a higher valuation than that of a railroad company, and the allegation in the answer in this particular is under the gravest suspicion of inadvertent inaccuracy.

But in support of the justice of allowing this reduction on privately owned real estate and not allowing it to the railroads, it is contended by the defendants that it was necessary to allow the reduction in value of privately owned real estate by reason of the economic conditions then prevailing which reduced this property on account of the crops, but that it was not necessary to allow it to the railroads because railroad property had not decreased in value. (Record p. 53-54.) This argument is unsound because it is based on false statements, and indeed, there is no evidence to support this contention. We do not contend that if real estate privately owned had decreased in value the assessment should not be decreased, but the constitutional provision referred to demands that when it is decreased on one class of real estate, it shall be decreased on that class of real estate belonging to other citizens. The bill and affidavits show that perhaps railroad property had decreased in value more than

real estate privately owned because of conditions that then peculiarly affected railroads, so far as earning powers are concerned, and railroads were rapidly approaching insolvency. (Record p. 75-107.)

It would require very strong proof in considering the question of injunction in this case for the Court to assume, with the facts now before it, that there is any merit whatever in this contention of the defendants, but to make the situation perfectly clear, we have surveyed the State, and have taken the consideration of all conveyances of over one thousand dollars ($1,000.00) in value from January 1st to June 30, 1921, inclusive, and compared the consideration expressed in the deeds with the assessed value of the real estate in each instance, as ascertained, throughout the entire State, and the ratio of assessed to true value is 66.58 per cent. (Record p. 114-118.) We have taken a favorable period of the low value of real estate, because we have taken a period which represents a time nearer the time of extreme depression in value than a time of extreme high value. It was shown, upon the other hand, that complainant's earnings from operation had fallen from $11,000,000, in 1916, to $7,000,000, in 1919, and to $1,800,000 in 1920, and this for the entire system. (Paragraph 29, Bill Record p. 28, paragraph 29 of answer Record p. 62.) The figures for 1921, show considerably reduced earning capacity.

The emphasis of the injustice and discrimination in not giving to the railroads the same percentage of horizontal reduction given to the counties, municipalities and special districts is obvious for it is shown and admitted, as in this case, that the tax levies throughout the counties through which this railroad operates, have been increased on an average of over 100 per cent after horizontal reduction, so that in order to raise the necessary amount of money, if the railroad's assessment is not reduced, by reason of the increased

levy on an unreduced assessment, the taxes of the railroads will be doubled. The refusal of the Commissioner of Revenue, therefore, to allow to this complainant the same reduction on all its real property as was allowed in the case of private persons, violates the uniformity clause of both articles of the Constitution of North Carolina levying taxes for State and county purposes, and places a burden upon railroad companies of paying on a higher assessment of real property than other persons in the counties.

For illustration, take the County of Edgecombe. In that county there was a horizontal reduction of 50 per cent given to persons and corporations other than railroads. (Record, p. 17.) The Commissioner of Revenue, however, certified down to the County of Edgecombe the same allocation of real property of this complainant based upon the assessment made in 1920, which places upon this complainant the burden of paying upon an assessment of over 100 per cent in the County of Edgecombe based upon a tax levy of 134 per cent more than for the year 1920, while the private owners of real property in Edgecombe County will only pay upon a 50 per cent valuation. The result of this is that, while other taxpayers generally paid no more taxes in 1921, due to the decrease in valuation and increase in rate, yet this complainant will, due to the increase in rate of taxation and the refusal of the Commissioner of Revenue to reduce the real property assessment, pay an increase of taxes to Edgecombe County for 1921 of approximately 134 per cent.

It will pay to the County of Nash an increase of taxes upon the same basis of approximately 109 per cent, if the assessment is not changed.

By stipulation (Rec., p. 45) it was agreed between the parties to this case that complainant should pay for

the year 1921 taxes upon an assessment of $34,645,345, pending the hearing of this suit.

On account of the great increase in the rate of taxation due to its horizontal reductions, the benefit of which was not given to the railroads, the complainant paid for the year 1921 to the various counties and municipalities in North Carolina upon such stipulated assessment of $34,645,345, the sum of $446,654, as against the sum of $353,663 on a valuation of $50,867,800 for the year 1920, being an increase in 1920 on a lower assessment of $92,-990. But if it is compelled to pay on a valuation of $50,867,800, it will have to pay as taxes for the year 1921 the sum of $627,067, which will be an increase of $273,403 above the taxes paid for the year 1920, or 177%, which will be an increase of taxes over and above the taxes for the year 1920 for three years of $820,211; whereas, as shown by the illustration taken from Edgecombe County, other taxpayers will have to pay practically only the same amount of taxes they paid in 1920.

This condition is brought about solely by the legislative enactment of North Carolina, as construed and enforced by the Commissioner of Revenue, which, in and of itself, is an intentional and systematic discrimination against an overvaluation of railroad property, and undervaluation of other property, because this horizontal reduction is made without reference to the true value of the properties so reduced.

Equality of treatment entitles complainant to the same reduction as was given in the case of real estate of other persons and corporations.

Greene v. L. & N. Railroad, 244 United States 499,
Washington Water Power Company v. Kootenai County, et al., 270 Federal 369,

Cummings v. Merchants' National Bank, 101 United States 153.

Taylor v. Louisville & Nashville Railroad, 88 Federal 350.

Raymond v. Chicago Union Traction Company, 207 United States 20.

In all of these cases the Court holds that where there has been a systematic undervaluation of property other than railroad property, and a higher valuation upon railroad property, the court will grant relief. There can, it seems to us, be no plainer instance of systematic overvaluation of railroad property than in the present case. The fact that the Legislature authorized horizontal reductions in real estate, and the county boards made these reductions, approved by the State Board of Equalization, without reference whatever to the true value, and that the same reductions were refused to the railroads by the Commissioner of Revenue, shows an intentional and systematic scheme to overvalue the property of railroads and make them bear more than their equal proportion of the burden of taxation. It makes no difference that real estate was horizontally reduced by the county boards and the railroad real estate valued by the Commissioner of Revenue.

In the *Greene* case, *supra,* this Court quoting from the case of *Exchange Bank v. Hines,* which quoted from the *Cummings* case, *supra,* says:—

> "Taxing by a uniform rule requires uniformity not only in the *rate* but also uniformity in the *mode of assessment* upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment as well as in the rate of taxation."
>
> (Italics ours.)

The Court further says, on pages 515 and 516:—

> "It is equally plain that it makes no difference what basis of valuation—that is, what percentage of full value—may be adopted, *provided it be applied to all alike.* The adoption of the full value has no different effect in distributing the burden than would be gained by adopting 75 per cent, or 50 per cent, or even 10 per cent, as the basis—so long as either was applied uniformly. The only difference would be that, supposing the requirements of the treasury remained constant, the rate of taxation would have to be increased as the percentage of valuation was reduced."
>
> (Italics ours.)

Here, however, so far as railroad property is concerned, not only has there been a refusal to reduce the valuation in conformity with other real estate, but the rate of taxation has been increased, thereby violating the very rule of law laid down by the Court in the *Greene* case.

In the case of *Taylor v. Louisville & Nashville Railroad Company,* 88 Fed. 350, Circuit Judge Taft (now Chief Justice), says, at page 364:—

> "The sole and manifest purpose of the Constitution was to secure uniformity and equality of burden upon all the property in the State. As a means of doing so (conceding the defendant's construction is the correct one), it provided that the assessment should be according to its true value. It emphasized the object of the section by expressly providing that no species of property should be taxed higher than any other species. We have before us a case in which the complaining taxpayer, and other taxpayers owning the same species of property, are taxed at a higher rate than the owners of other species of property. This dies not come about by legislative discrimination, but by the intentional and systematic disregard of the law by those charged with the duty of assessing all other

species of property than that owned by complainant and its fellows of the same class."

The Court further says, page 372:—

"An intentional undervaluation of a large class of property, when the law enjoins assessment at true value, is necessarily designed to operate unequally upon other classes of property to be assessed by other taxing tribunals, who, it may be presumed, will conform to the law."

and on page 374 the Court says, further:—

"The various boards whose united action is by law intended to effect a uniform assessment on all classes of property are to be regarded as one tribunal, and the whole assessment on all classes of property is to be regarded as one judgment. If any board which is an essential part of the taxing system intentionally, and therefore fraudulently, violates the law, by uniformly undervaluing certain classes of property, the assessment by other boards of other classes of property at the full value, though a literal compliance with the law, makes the whole assessment, considered as one judgment, a fraud upon the fully-assessed property. And this is true although the particular board assessing the complainant's property may have been *wholly free from fault or fraud or intentional discrimination.*" (Italics ours.)

We desire to call the Court's attention to the fact that there is no method under the laws of North Carolina for equalizing railroad property. The act does not provide for a hearing by the State Board of Equalization and the Attorney General of North Carolina has so ruled. In the *Taylor* case the railroad property was valued at 100 per cent of its actual value and other property at 75 per cent of its value. It will be contended by the State that this Court must first find that there was a systematic intentional undervaluation for fraudulent purposes of discriminating against railroads.

In the *Taylor* case, 88 Federal 350, Judge Taft says, at page 372:

> "An intentional undervaluation of a large class of property, when the law enjoins assessment at true value, is necessarily designed to operate unequally upon other classes of property to be assessed by other taxing tribunals, who, it may be presumed, will conform to the law. In the case at bar the county assessors and Board of Equalization of each county have been actuated in their violations of the law in their desire to reduce, as far as may be, their county's share of the State burdens. Their undervaluations of property have been uniform as to all property in their county but railroads. They could not but know that such undervaluation must work an injustice against the property of railroads, if assessed at its true value by the State board, and taxed for county and State purposes on that basis. In this sense the rule of undervaluations adopted in each county is necessarily 'designed to operate unequally within the meaning of Mr. Justice Miller in the *Cummings* case. The *ratio decidendi* of that case is to be gathered from the facts, and the language of the opinion is to be interpreted in the view of the facts. The case has been commented on by the Supreme Court in a number of subsequent cases, but it has never been modified or over-ruled."

Mr. Chief Justice Taft takes up all of the various cases, summarizes them, distinguishes them, and comes to the conclusion that, where property of persons, other than railroads, is assessed at less than true value, and the railroad property at true value, there is a systematic undervaluation which the Courts will prohibit.

Probably no case has yet been decided which went more fully into this question of undervaluation than the *Taylor* case. It was followed in *Wallace v. Hines* and cases since that time. The case of *Wallace v. Hines* has already been referred to in this brief.

In the *Kootenai* case, 270 Federal 369, decided by the Circuit Court of Appeals of the Ninth Circuit, on February 1, 1921, the Court passed upon an assessment made by the Idaho Public Utilities Commission. The Court says, page 374:—

> "Having seen that the assessment of property other than public utilities was intentionally made by local assessors upon a valuation of 50 per cent of cash value, but the property of appellant, a public utility was deliberately assessed by the State authorities upon a basis of 75 per cent of actual value, we are met with the question whether appellant is entitled to injunction against the excess over which the general property of the State was assessed. Whether or not the State Board of Equalization assessed other utilities upon the basis of 75 per cent of actual value is not vital in the present instance, because if the State board, knowing of the intentional assessment of property generally on a 50 per cent value, assessed the property of appellant on a 75 per cent basis, the fact that they may have assessed other public utilities upon a like basis cannot defeat the right of appellant to relief."

In the *Cummings* case, *supra*, the Court held that, when a rule or assessment of value for purposes of taxation is adopted by those whose duty it is to make assessments, which is intended to operate unequally in violation of the fundamental principles of the Constitution, and when this principle is applied, not solely to one individual, but to large classes of individuals or corporations, equity may interfere to restrain the taxes and unconstitutional exercise of power.

In that case, the valuation of the shares of the bank were estimated at a much higher sum in proportion to their real value than other property, real and personal in the same county, city and State, and this was done under a statute of the State, and by a rule or system deliberately adopted by

the assessors for the avowed purpose of discriminating against the shares of all bank stock. The Court held that the assessment was void as lacking equality. The Court quoted, with approval the Supreme Court of Ohio, as follows:—

> "Taxing by a uniform rule requires uniformity not only in the *rate* of taxation but also uniformity in the *mode of assessment* upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation. But this is not all. THE UNIFORMITY MUST BE CO-EXTENSIVE WITH TERRITORY TO WHICH IT APPLIES. If a State tax it must be uniform over all the State; if a county, town or city tax, it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the Constitution does not stop here. It must be extended to *all property* subject to taxation SO THAT ALL PROPERTY must be taxed alike, *equally*, which is taxing by a uniform rule." (Caps ours.)

It appeared that there were various boards for assessing the property, and various rules for assessing it. There was no uniformity, there was no equalization, and therefore, the Court enjoined the assessment.

But we do not have to go any further to establish our contention in the case at bar than the case of *Greene v. L. & N. Railroad,* 244 U. S. 499. That case came from Kentucky, and the facts in it appear to be that the property of the railroads was taxed upon a different basis than the property of other persons. In the *Greene* case the Court again approves the quotation just above cited, by the Supreme Court of Ohio, in *Exchange Bank v. Hines, supra.*

In *Connor on the Constitution of North Carolina,* page 263, referring to Art. 5, Sec. 3, of the Constitution, it is said:—

"It is the provision, and was the purpose of the Constitution, that thereafter there should be no discrimination in taxation in favor of any class, person, or corporation, but that everything, real and personal, possessing value as property and the subject of ownership, shall be taxed equally and by a uniform rule. In this respect the present Constitution shows no favor and allows no discrimination."

It is further said on the same page:

"No one, who reads these sections and the other provisions of the Constitution, will fail to be impressed with the earnest effort made to engraft upon our organic law the great principle of equality in taxation."

Article 7, Section 9, of the Constitution of North Carolina provides:

"All taxes levied by any county, city, town or township shall be uniform and *ad valorem* upon all property in the same except property exempted by this Constitution."

In *Puitt v. Commissioners,* 94 N. C. 709, the Court held, in referring to this section of the Constitution, that it requires that all taxes, whether levied for State, county, town or township purposes, shall be uniform, and allows no discrimination in favor of any class or person or interest, but requires that all things possessing value and subject to ownership shall be taxed equally and by a uniform rule.

The attention of the Court is directed to the case of *Redmand v. Town of Tarboro,* decided by the Supreme Court of North Carolina, 10 S.E., 845. The opinion was by Mr. Justice Shepard, afterwards Chief Justice, and has not been over-ruled. The decision very clearly shows that the Constitution of North Carolina is such that there can be no discrimination in taxation in favor of any class, person or corporation, but that everything, real and personal, possessing value as property, and the subject of ownership, must

be taxed *equally and by a uniform rule.* It is clear from this decision, and from the decisions of the Federal and Supreme Courts cited, that the assessment involved in this action, and the taxes thereon, are both illegal and void, because not levied uniformly upon all property, and that they represent an intentional systematic discrimination in favor of the property of individuals in the State against that of railroad corporations. Mr. Justice Shepard in this case says:

> "Experience in many of the States has shown that the principles of taxation should not be left to the uncertainty of caprice of successive legislatures, but that they should be fixed and immutable, and embodied in the fundamental law, under whose broad shield all property, of whatsoever species, may be equally protected. This, we think, was the purpose of the framers of our Constitution in inserting therein the sections referred to, as well as section 3 article 5, relating to State taxation. No one who reads these and other provisions of the Constitution will fail to be impressed with the earnest effort there made to engraft upon our organic law the great principle of equality in taxation.
>
> The subjects of every State ought to contribute to the support of the government as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the State. The expense of government to the individuals of a great nation is like the expense of management to the joint tenants of a great estate, who are all obliged to contribute in proportion to their respective interests in the estate. In the observation or neglect of this maxim consists what is called the equality of taxation.' Such are the words of the author of "The Wealth of Nations" (book 4 c. 2.) quoted with approval by Judge Cooley (Tax'n, p. 9) and we think that they well illustrate the true spirit and purpose of our constitutional provisions upon the subject.

"We are of opinion that section 9, article 7, was not intended to apply the rules of uniformity and equality to the subjects which the Legislature might alone select for taxation, but that it requires that all property shall be taxed, and taxed in accordance with the said rules. A contrary view was taken by the Court soon after the adoption of the Constitution in the case of *Pullen v. Commissioners,* 68 N. C., 451. The charter enumerated eight subjects of taxation 'beginning with real estate situate in the city, and ending with encroachments on the streets by porches,' etc.; but it did not include moneys, credits, etc. The Court affirmed the opinion of the Superior Court Judge that the Constitution was 'intended to declare simply the manner in which municipal corporations should levy taxes, to-wit, that they should be uniform and *ad valorem,* and not to declare the subjects to be taxed by them.' The decisions in which this case has been cited (such as *Winston v. Taylor,* 99 N. C. 210, 6 S. E. Rep. 114, *State v. Bean,* 91 N. C. 554, *Latta v. Williams,* 87 N. C. 126, and perhaps others), have reference only to the taxing of trades, professions and the like, and, these not being property, are correctly placed within the principle declared therein. Under the construction of the Constitution as declared in *Pullen's* case, it would be in the discretion of the Legislature to unequally distribute the burdens necessarily incident to government, and the worst species of class legislation would be tolerated. It would (says Dixon, C., in *Knowlton v. Supervisors,* 9 Wis. 422) 'make the Constitution operative only to the extent of prohibiting the Legislature from discriminating in favor of particular individuals, and would reduce the people, while considering so grave and important a proposition, to the ridiculous attitude of saying to the Legislature 'You shall not discriminate between single individuals or corporations, but you may divide the citizens up into different classes, as * * * the owners of different species or descriptions of property, and legislate for one class, and against another, as much as

you please, provided you serve all the favored and unfavored classes alike;' thus affording a direct and solemn constitutional sanction to a system of taxation so manifestly and grossly unjust that it would not find an apologist anywhere, at least outside of those who are the recipients of its favors.' Such a construction, in our opinion, not only offends the true spirit of the Constitution, but has been distinctly and solemnly repudiated by the uniform decisions of this Court in subsequent cases. These cases decide that, when the taxing power is exercised for a public purpose, the Constitution, and not the Legislature, declares what property shall be taxed; and that it requires that all shall be taxed, and by a uniform rule, and *ad valorem*. This construction is conceded as to State and county taxation, under section 3, article 5, and we are unable to conceive why the same rule should not apply to section 9, article 7, as the langauge of the latter is even more imperative than that of the former. In *Cobb v. Elizabeth City*, 75 N. C. 1, Rodman, J., after quoting section 9, article 7; says 'All taxes, therefore, must be levied as well on personal as on real property, notwithstanding any contrary provision in the charter.' In *Kyle v. Commissioners*, Id. 445, it was decided that 'shares of stock in a national bank are proper subjects of State, county and municipal taxation.' The Court said (Bynum, J., delivering the opinion) that, 'in our view, it was unnecessary for the Revenue Act or the charter of the Town of Fayetteville to tax specifically the national bank shares of either residents or non-residents. * * * The Constitution seizes them, and extracts from them their proportional share of the public burdens. Neither the Legislature nor the town corporation can exempt them from taxation without doing violence to the Constitution.' 'It is the provision and was the purpose of the Constitution that thereafter there should be no discrimination in taxation in favor of any class, person or interest; but that everything real and personal, possessing value as property, and

the subject or ownership, shall be taxed equally and by a uniform rule. In this respect the present Constitution shows no favors and allows no discretion. If, then, the Town of Fayetteville has the power to tax, the Constitution steps forward, and commands that all property shall be taxed, and by a uniform rule.' To the same effect are *Young v. Henderson,* 76 N. C. 420, *London v. Wilmington,* 78 N. C. 109 and *Puett v. Commissioners,* 94 N. C. 709. The language of the Court in these decisions can admit of no question, and, if anything further were needed to sustain the principles there laid down, we have the high authority of the late distinguished chief justice (Smith) in *Vaughan v. Town of Murfreesboro,* 96 N.C. 317, 2 S.E. Reporter 676, who says that the Constitution art. 7, s. 9, 'commands that all taxes levied in any county, city, town, or township shall be uniform and *ad valorem* upon all property in the same, except property exempt by this Constitution; by force of which, notwithstanding the omission in the charter, personal as well as real (property) must be assessed and subjected to the same public burden.' This overwhelming weight of authority so consonant with the principles of equality in taxation everywhere pervading the fundamental law, conclusively establishes the proposition that wherever the taxing power is exercised for a public purpose, all property shall be taxed, notwithstanding any contrary provisions in the general law or the charter."

In the case of *Kyle v. Commissioners,* 75 N. C. 445, Judge Bynum, in delivering the opinion of the Court, among other things, says:

> "For whenever the power of taxation is exercised, all taxes, whether State, county or town, by force of the Constitution must be imposed upon the real and personal property, moneys, credits, investments in bonds, stocks, etc."

It is, therefore, clear that this assessment, and the taxes

thereon, are both illegal and void because not levied uniformly upon all property.

III.

CAPITALIZATION OF EARNINGS.

In paragraph 30 of the Answer (Record, p. 63), the defendants admit that the rate of interest used in capitalizing earnings of railroads of North Carolina in endeavoring to assess their property was six (6) per cent, and claim that that is the only proper rate to use because it is the legal rate of interest in North Carolina.

The bill sets up, and it is not denied, that railroads enjoying highest credit, of which the complainant is one, were at the time of the assessment paying seven (7) per cent and over for money and in some instances as high as eight (8) per cent.

The affidavits filed in the Southern Railroad case, which were by consent filed on behalf of all of the roads, show that the rate of interest *being charged* in North Carolina and elsewhere was then seven (7) per cent and upwards.

This being so, certainly the earnings of the railroad company should be capitalized upon the same basis as the rate of interest which they were paying for borrowed money, and not upon six per cent simply because that is the legal rate fixed by the Statute of North Carolina. It is shown in the bill and not denied in the answer, that this company operates through many southern States and the rates of interest in these States vary from six to eight per cent. (Rec., p. 29.) It is a well known fact that railroads have to borrow money upon bonds, which in nearly all cases are sold in New York, and therefore the rate of interest in the New York market necessarily must be taken into consideration in capitalizing earnings.

In *Lincoln Gas Co. v. Lincoln,* 250 U. S., 256, the Court disapproved the finding that any rate yielding as much as six per cent upon the invested capital should be regarded as confiscatory in view of the undisputable evidence accepted by the master that eight per cent was the lowest rate sought and generally obtained upon capital invested in banking, merchandising and other business in the vicinity, seven per cent being the legal rate of interest in Nebraska. And the Courts have held generally that the rate of interest at which money can be borrowed for investments in business is an important circumstance to be taken into consideration when ascertaining a reasonable return upon property.

Chicago, etc. Co. v. State Board of Equalization, 114 Fed. 557.
Santiago Water Company v. Santiago, 50 Pac. 633.
Consolidated Gas case, 157 Fed. 849-870.
See also *P. C. C. & St. L. R. R. Co. v. Backus,* 154 U. S., 424, 439.
Spring Valley Water Works, 124 Fed. 574.
L. & N. v. Coulter, 131 Fed. 282.
Milwaukee Electric Railway v. Milwaukee, 87 Fed. 577.

The fallacy of defendant's contention is shown when the only reason given for capitalizing railroad earnings at six per cent is that the North Carolina legal rate of interest is six per cent. Suppose, for instance, the legal rate of interest in North Carolina was four per cent, but the railroads were compelled to pay seven per cent. Would it be logical, and would it be just to the railroads, to capitalize the earnings at four per cent when all of the time the railroads were paying seven per cent for the money? The rate of six per cent in North Carolina was fixed because the Legislature in its judgment thought that a yield of six per cent was all that would be necessary to induce people to invest their money in enterprises within the State. This rate was fixed, though, thirty years ago. Times have

changed and conditions of business have changed. If investments in business, however, in North Carolina now yield more than six per cent, then the method of capitalizing of the earnings of the railroads in North Carolina should be changed to correspond with the changing condition.

PART FOUR.

FRANCHISE TAX.

I.

THE SO-CALLED FRANCHISE TAX OF ONE-TENTH OF ONE PER CENT. IS AN AD VALOREM TAX AND VOID BECAUSE NOT LEVIED EXCEPT ON RAILROAD PROPERTY.

This so-called franchise tax is void as being contrary to the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States. The Constitution of North Carolina provides that taxes shall be uniform on real and personal property. The Legislature of North Carolina has levied no *ad valorem* taxes for State purposes on any property except this tax.

The Revenue Act, Section 82 (6½), provides that a tax of one tenth of one per cent upon property, tangible and intangible, be levied on all railroads in the State which were assessed in the year for which report is made for *ad valorem* taxes.

The statute provides:

> "The franchise tax of each such railroad company for the privilege of exercising its franchise shall be one-tenth of one per cent (0.1 per cent) of the value so ascertained by the State Tax Commission."

On corporations generally a tax of one-tenth of one per cent upon the subscribed and issued and outstanding stock of such corporations is levied. Thus it is seen that on railroads, and only on railroads, is a tax levied of one-tenth of one per cent of the value of the property. That can be nothing less than a property tax. This tax, however, is not levied only on tangible property, but is levied

on the tangible and intangible property of the railroad, including the property used in interstate commerce.

In *Galveston, etc., Railroad v. Texas,* 210 U. S. 217, the Court says that neither the State Court nor the Legislature, by giving a tax a particular name, can take from the Court its duty to consider its real nature and effect, and in the case of *St. L. S. W. Railroad v. Arkansas,* 235 U. S. 350, the Court held that it would regard the substance rather than the form, and that the controlling test in determining the nature of the State tax is found in the operation and effect of the statute as applied and enforced.

The Supreme Court of North Carolina, among others, has construed the definition of franchise tax in the case of *Worth v. Petersburg Railroad,* 89 N. C. 301. In this case the Court was considering the constitutionality of a tax imposed upon the gross receipts of a company and upon the capital stock, which was resisted upon the ground that the company was exempted from taxation under its charter.

In defining a franchise tax, as distinguished from an *ad valorem* or property tax, the Court says; at page 306:

> "Whenever a tax is imposed upon a corporation directly by the Legislature, and is not assessed by the assessors, and the amount depends *on the amount of business transacted* by the corporation, and the extent to which it has exercised the privileges granted in its charter *without reference to the value of its property or the nature of the investments made of it,* it is a franchise tax." (Italics ours.)

In this case the Supreme Court of North Carolina clearly defines the line of demarkation between an *ad valorem* and franchise tax by the words *"without reference to the value of its property or the nature of the investments made of it."* The Legislature of North Caro-

lina, however, has fixed this so-called franchise tax based upon the value of the property, the very thing which the Court has excluded as being an element of the franchise tax.

Likewise, this Court in the case of *Home Insurance Company v. The People of the State of New York,* 134 U. S. 594, in quoting from the case of *Providence Savings Institution v. Massachusetts,* 73 U. S. 611, says:

> "Franchise taxes are levied directly by an act of the Legislature; and corporations are required to pay the amount into the State treasury. They differ from property taxes as levied for city and municipal purposes in the basis prescribed for computing the amount and the manner of the assessment and the mode of collection."

and again

> "Comparative valuation in assessing property taxes is a basis of computation in ascertaining the amount to be contributed by an individual, but the amount of the franchise tax depends upon the *business transacted by the corporation* and the extent to which they have been exercise privileges granted in their charter." (Italics ours.)

A franchise tax is not a tax on the property of a corporation, and its validity is sometimes dependent upon this consideration.

> *Tremont & Suffolk Mills v. City of Lowell* (Mass.), 59 NE 1007.

A franchise tax, when applied to domestic corporations, is a tax upon the right of a corporation to exercise the privilege conferred upon it, and is not a property tax.

> *Chicago & Eastern Ill. Railroad v. State,* 51 N. E. 924.

A franchise tax is not levied on property at all, but is imposed on a corporation for the privilege of carrying

on business in the State under the existing corporate franchise granted by the State.

People v. Knight, 67 N. E. 65.

In the case of *Society of Savings v. Hoyt,* 6 Wallace 594, this Court, in the leading opinion in this country, very pertinently shows the distinction between a franchise and property tax, and in substance says, that a franchise tax and a property tax, when the two approach each other, ordinarily may be distinguished by the respective methods adopted of laying them and fixing their amounts. If a tax is imposed directly by the Legislature without assessment, and its sum is measured by the amount of business done or the extent to which the conferred privileges have been enjoyed or exercised by the taxpayer, irrespective of the nature or value of the taxpayer's assets, it is regarded as a franchise tax; but if the tax is computed upon the valuation of property, and assessed by assessors, either where it is situated or at the owner's domicile, although franchise privileges may be included in the valuation, it is considered a property tax.

In the case of *State v. Stonewall Insurance Company* (Ala.), 7 So. 753, Mr. Justice Clopton, in writing the opinion, makes the following distinction between *ad valorem* and franchise tax. He says:

> "The usual and most certain test is where the tax is upon the capital stock, *eo nomine,* without regard to its value, or at its assessed valuation in whatever it may be invested. If the former, it is a franchise tax. If the latter, a tax upon the property."

In the *Bank Tax Cases,* 2 Wallace 200 the Court had before it the question of the tax upon the capital of a State bank, and held that this tax was a tax on the property of the institution, following the decision of the Court in the case of *Bank*

of Commerce v. Commissioner of Taxes, 2 Blackford 620. In the latter case, the Court in stating the case, says:

"The capital of a bank is taxed under the existing laws upon a valuation like the property of individual citizens, and not as formerly on the amount of the nominal capital without regard to loss or depreciation."

Ad valorem taxes have been variously defined as follows:

"AD VALOREM (Latin, according to value). Phrase used in levying customs duties when the duties on the goods are fixed at rates proportionate to the estimated value of the goods."

—*Standard Encyclopaedia.*

"AD VALOREM duty is levied in proportion to the value *and not quantity of the article imported.* It is an inconvenient form of taxation."

—*Nelson's Encyclopaedia.*

"AD VALOREM, lit, according to value—used to designate duty or charge laid upon goods at a certain rate per centum upon their value as stated in their invoice in opposition to a specific sum upon a given quantity or number."

—*Webster's International Dictionary.*

"AD VALOREM, according to value, applied 1. To customs or duties levied according to marketable value or worth of the goods at original place of shipment as sworn to by owner and verified by customs appraisers."

—*Century Dictionary.*

"AD VALOREM. According to the valuation. Duties may be specific or *ad valorem. Ad valorem* duties are always estimated at a certain percentage on the valuation of the property."

—*Bouvier's Dictionary.*

"AD VALOREM. A tax or duty upon the value of an article or thing subject to taxation."

—*Bailey v. Fuquay,* 22 Mississippi 497, 501.

"AD VALOREM. According to value. Duties are either *ad valorem* or specific. The former when the duty

is laid in the form of a percentage on the value of the property; the latter when it is imposed as a fixed sum on each article or class without regard to its value. The term *'ad valorem tax'* is as well defined and fixed as any other used in political economy, and simply means a tax or duty on an article or thing subject to taxation."

—*Black on Tax Titles.*

Writers on political economy all give the same definition. *Perry,* in his work on political economy, says:

"An *ad valorem* tax is a tax upon so much per centum of the invoice or appraised money value of the goods subject to taxation."

Cooley on Taxation describes *ad valorem* taxes as follows:

"AD VALOREM TAXES. A large proportion of the duties on imports are of this description and so sometimes are many of the taxes which make up internal revenue. The statute levying them prescribes the rule *but requires the action of the appraisers in apportioning them between individuals.* By far, a large proportion of all such taxes is also upon property by valuation, and effect can only be given to it by means of appraisers who value the property and apportion the taxes by assessments."

In *Black on Tax Titles,* Section 83, after defining specific taxes, the writer says:

"But the rule is different with respect to *ad valorem taxes.* Here the intervention of ministerial officers is necessary to effect the apportionment between individuals. Assessors are called upon to assess the value of the property to be taxed, and apportion the shares according to their valuation."

"*Ad valorem* means a quotient part of the existing value of the property, not an adjustment of burdens to each individual man in view of his particular gains or damages."

—*Little Rock v. Board of Improvement,*
42 Arkansas 162.

In *Levy v. Louisville* (Kentucky), 28 L. R. A., 480, 482, the Court says:

> "The *ad valorem* system relates to the assessment and taxation of all property; the income tax, to the product or income from property or from business pursuits. The license tax is one imposed on the privilege of exercising certain callings, professions, or avocations, that, when collected, goes into the State treasury, and when applied to municipal taxations is termed a 'license fee.' A license based on franchises includes the ascertainment of its value, and the mode of determining that value. The power to impose an income tax, a license or franchise tax, is expressly given by the Constitution to the Legislature—and the exercise of such power by municipal governments must be derived from Legislative enactments; but there is no authority, express or implied, conferred by the Constitution on either the State or municipal Legislatures to substitute a license tax in lieu of the *ad valorem* system."

The Constitution of Kentucky in that case was similar to the present Constitution of North Carolina in regard to uniformity and equality. There the law under construction applied an *ad valorem* assessment to real property, and a license tax to personal property; whereas, the Constitution provided that the taxes should be uniform upon all property within the particular limits of the authority levying the taxes, and further provided that all property should be assessed for taxation at its fair cash value.

The Court further says, page 484:—

> "The words 'license tax' imply a burden on that which is not property, but results from its enjoyment or the conduct of the business or calling; and the Legislature assembling after the adoption of the constitution, and composed of some of the leading

members of the constitutional convention, understood the meaning attached to the phrase 'license tax,' and under the title of 'Revenue and Taxation,' in subdivision 4 of chapter 108, imposed a license tax on certain kinds of business, such as a license on taverns, retailing spirituous liquors, on saloons, selling pistols, bowie knives, ten-pin alleys, peddlers, insurance companies, circuses and so on, *showing plainly that its imposition as a tax upon property was not even considered.*" (Italics ours.)

In 26 *Ruling Case Law,* 35, Sec. 19, the distinction between property and excise taxes is well set forth:

"The distinction between property taxes and excises is an inportant one, since in many of the State Constitutions there are different limitations upon the power of the Legislature with respect to the two classes of taxes. The phraseology of the various Constitutions is not invariably the same, and different words are used in the different States to describe the two classes of taxes; but it is believed that there is no substantial difference in actual practice. An excise and a property tax, when the two approach each other, ordinarily may be distinguished by the respective methods adopted of laying them and fixing their amounts. If a tax is imposed directly by the Legislature without assessment, and its sum is measured by the amount of business done, or the extent to which the conferred privileges have been enjoyed or exercised by the taxpayer irrespective of the nature or value of the taxpayer's assets, it is regarded as an excise; *but if the tax is computed upon a valuation of property, and assessed by assessors either where it is situated or at the owner's domicile, although privileges may be included in the valuation, it is considered a property tax.* (Italics ours.)

In *Connor on the Constitution of North Carolina, Annotated,* page 271, we find the following quotation:

"Taxes on property and license taxes on the privilege

of doing business are separate and distinct taxes on separate and distinct things."

Albertson v. Wallace, 81 North Carolina 479.

"Taxes on property and taxes on privileges are distinct taxes, and an exemption by special act from one of these taxes does not exempt from the other."

Guano Company v. Tarboro, 126 North Carolina 68.

"A tax on a dog is constitutional. It is not an *ad valorem* tax, but a specific tax for the privilege of keeping a dog."

Mowery v. Salisbury, 82 North Carolina 175.

From the above authorities it will be seen that in no way can this tax come within the definition of a franchise tax. It is a direct assessment on the value of complainant's property, tangible and intangible, assessed for *ad valorem* taxes, made up of property within and without the State of North Carolina, not measured by the amount of business done, nor the capital stock, not imposed directly by the legislature without assessment, not measured by the extent to which the conferred privileges have been enjoyed or exercised by the taxpayer, irrespective of the measure of value of his assets, but requiring the interposition of a separate body to appraise and determine the value.

If this were the sole tax levied for State purposes, it would indicate that the State intended to thus raise its entire revenue for State purposes and endeavor to embrace therein its entire scheme of taxation, and there would be some merit in the claim that it is a just tax, but other taxes are attempted to be raised from this complainant, and this tax cannot exist as a separate franchise tax as it has no element of a franchise tax. The tax as levied differs entirely from other franchise taxes. In Section 77 of the Revenue Act (Public Laws, N. C., 1921, page 188), the privilege tax on chair and sleeping cars is three per cent

of the gross earnings. In Section 79 (a) of the Revenue Act page 189 the annual privilege or license tax on express companies is five dollars ($5.00) per mile when it earns not more than 6 per cent on its capital investment for the previous year; six dollars ($6.00) per mile when it earns as much as seven per cent and less than eight per cent; when it earns eight per cent or more, seven dollars ($7.00) per mile, and a minimum of five dollars ($5.00) per mile. There is a permission also given the towns and cities to levy a municipal license tax. In Section 80 of the Revenue Act, page 189-190, telegraph companies, as a privilege of engaging in business, are required to pay an annual license tax of five dollars ($5.00) for each pole line within the State, provided that nothing shall be construed as permiting an imposition of any tax on interstate commerce or business of the Federal Government. No county shall be allowed to levy such a tax, but towns of certain population can levy an additional tax. By Section 81 of the Revenue Act, page 190, telephone companies shall pay an annual tax of three per cent on the gross receipts of such telephone companies within the State, reckoning for the purpose of ascertainment the amount of such gross receipts the principal of such interstate business done within the State, which is properly credited to North Carolina, and this tax is graduated and lessened according to the investment of property of telephone companies in the State. We have no occasion to suggest that the difference in the revenue on the excise, license or privilege tax, interchangeably named, and imposed upon the companies above mentioned, are justified by any proper classification, and we are not attempting to argue their rights, but we do say that these taxes have the ear marks of franchise or privilege taxes, because they are measured by property and not imposed directly upon the value of property in the form of an *ad*

valorem tax, in contra-distinction to a tax imposed upon the property right of railroads without measurement, limitation in amount, or otherwise. By Section 82 (6½) page 193 of the Revenue Act, railroads alone are singled out as to this franchise or privilege tax for the placing of a tax of one-tenth of one per cent on its entire property. This cannot be thought of as anything but *ad valorem* tax, because it cannot be conceived that it would be the purpose of charging complainant's railroad $50,000.00 as is claimed by the assessment of one-tenth of one per cent on $50,000,000.00; the Southern Railway, $100,000.00; the Norfolk Southern Railroad, $22,000.00; the Seaboard Air Line Railway, $34,000.00; and the Washington & Vandemere Railroad, $356.31 merely for the privilege of doing business within the State. It is a scheme to raise revenue, and not for the privilege of doing business, and must stand or fall as such. It cannot stand, because the law of North Carolina prevents the levying of an *ad valorem* tax.

Another reason why it cannot stand as a franchise tax is, that by Section 82 (7) and 82 (8) page 193 of the Revenue Act, this annual privilege tax is levied one-tenth of one per cent upon the outstanding capital stock of other corporations represented by their property and business in the State. The last tax has the virtue of being measured and limited by capital stock, but not upon its value. We cannot see such distinction between railroads and all other corporations, other than telephone, telegraph, express and Pullman companies, which would justify a classification to warrant an *ad valorem* tax as against railroads under the guise of a franchise tax.

A tax placed upon property as such, that is, upon the value of the property, is never a franchise tax.

The Revenue Act, Chapter 34, Public Laws 1921, Section 3, provides—

"No tax on any property in the State shall be levied for any of the uses of the State Government. The taxes hereinafter levied in this act are for expenses of the State Government, the appropriations to its educational, charitable, and penal institutions, pensions for Confederate soldiers and widows, the interest on the debt of the State, an equalizing fund for public schools, and other specific appropriations made by law, *and shall be collected and paid into the general fund of the State Treasurer.*" (Italics ours.)

If this tax, therefore, as we contend, is an *ad valorem* tax, and certainly all the authorities show that it is an *ad valorem* tax, it cannot be levied, because the Revenue Act expressly prohibits the levying of any tax on property, and this is the only property tax that is levied by the State.

It is true that the Constitution provides that taxes *shall* be levied on property, both real and personal uniformly and *ad valorem,* for State purposes, but the Legislature has seen fit to set aside this Constitutional requirement except in this specific instance.

Therefore, although, as a Constitutional requirement, the *ad valorem* tax should be levied for the purposes of the State, nevertheless, if levied only against railroad property, the tax is void because it is not uniform.

At the Extra Session, 1921, of the Legislature, Chapter 102 of the Public Laws of North Carolina, 1921, pages 128 and 129, Section 82 (6½) of the Revenue Act was amended, so that the tax therein imposed was made to appear to be a privilege tax instead of a franchise tax, but the method of ascertainment of the amount to be collected was in nowise changed. The tax is still based upon the assessment for *ad valorem taxation,* and under the authorities herein cited is an *ad valorem,* although denominated a privilege tax. The amendment will be hereinafter more particularly considered and shown not ap-

plicable to this suit, as it is not retrospective and was passed after the 1921 tax became due and after this suit had been instituted.

Nothing herein referred to as showing that it is an *ad valorem* tax is in any sense affected by its subsequent denomination as a privilege tax. If it is an *ad valorem* tax it is *ad valorem* whether it be called privilege or franchise.

Galveston etc., R. R. v. Texas, supra.
St. L. S. W. R. R. v. Arkansas, supra.

II.

EVEN IF THE SO-CALLED FRANCHISE TAX IS LEGAL, NEVERTHELESS, THE ASSESSMENT IS TOO HIGH AS THE STATUTE PROVIDES IN THE CASE OF COMPLAINANT THAT IT SHOULD PAY FIFTY PER CENT. OF THE VALUE.

Assuming that the franchise tax levied under Section 82 is a valid and proper tax, we contend, that under the provisions of that section itself, the tax so to be assessed against this company should be, not one-tenth of one per cent of the total assessed valuation of its property, but one-tenth of one per cent upon one-half of this total assessed valuation.

Section 82 (3½) provides:—

> "Sec. 82 (3½). That where a report required to be made under the provisions of this section to the State Tax Commission, by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which report

is made, or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under the rules laid down in Section 82 of this act to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which such report is made, the measure of the extent to which the corporate franchise of any such corporation is used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation in this State."

Now what this section states is, simply that where the proportion of capital stock of a foreign corporation, apportionable to this State, is less than one-half of the total assessed valuation of its property in this State, then the franchise tax is to be calculated, not upon total assessed valuation, but upon one-half thereof. As a matter of fact, the proportion of the capital stock of this company, apportionable to this State, is less than one-half of the total assessed valuation of its property within this State. The capital stock of the Atlantic Coast Line Railroad Company reported to the Commission was $68,782,900.00, and the amount apportionable to the State on a gross earnings basis is $17,282,391.00. The value found by the Commissioner of Revenue is $51,163,717.00, and one-half of this amount would be $25,681,858.50. It follows, therefore, that the franchise tax should be calculated upon the basis of one-half of one-tenth of one per cent of such assessed valuation, *unless,* by some other provision, railroad corporations have been specifically excluded from the benefits of Sec. 82 (3½).

Sec. 82 (9) provides as follows:

"Sec. 82 (9). That nothing in the nine preceding

sub-sections of this act shall apply to banks, insurance companies, fraternal, beneficent associations, building and loan associations, express, telephone or telegraph companies, or other corporations, upon which a franchise tax may be levied in other sections of this act."

Now, this Section 82 (3½) falls within the nine preceding sub-sections of Section 82 (9). Its provisions apply to all corporations, therefore, except those specifically named in Section 82 (9), or included therein in the phrase "or other corporations upon which a franchise tax may be levied in other sections of this act." Railroads are not specifically exempted from the provisions of the nine preceding sections, by the terms of Section 82 (9), nor do they fall within the class of "other corporations upon which a franchise tax is levied by the other sections of this act," the only franchise tax upon railroads being that levied under Section 82, and included within the nine preceding sub-sections mentioned in 82 (9).

The argument that railroads are included among the corporations entitled to the benefits of Section 82 (3½) is strengthened by reference to the fact, that until the special session of 1921, they were included as one of the exempted corporations under 82 (9). By the change in 1921, such corporations were omitted from those *excluded,* from which the only reasonable inference is that it was intended thereby to *include* them.

The words *"or other corporations upon which a franchise tax may be levied in other sections of this act"* clearly indicate the purpose of the Legislature to exclude from the provisions of Section 82 only those corporations which were not taxed in that section.

That whatever is not specifically excepted is included is a well recognized principle; also that the mention of

one thing implies the exclusion of another thing. *Expressio unius est exclusio alterius,*

25 *R. C. L.* 981.

Unquestionably, therefore, railroads are not excluded from the provisions of Section 82 (3½), and are entitled to the benefits thereof. This is the plain and obvious meaning of the words of the statute, and it is from such plain and obvious meaning that the Legislative intent must be gathered. The fundamental rules of statutory interpretation provide that:

> "No motive, purpose or intent can be imputed to the Legislature in the enactment of law other than such as are apparent upon the face and to be gathered from the terms of the law itself."
>
> 25 *R. C. L.* 962-3.

We have here a plain, obvious, unambiguous provision, and from it there can be but one conclusion, that the Legislature intended under this Act, that railroads, the proportion of whose capital stock, apportionable to this State, is less than one-half of the total assessed valuation of its property in this State, shall, in the calculation of the franchise tax, be taxed upon the basis of one-half of one-tenth of one per cent of such total assessed valuation.

Section 82 (6½) is particular as to railroads, just as other sub-sections are particular as to domestic and foreign corporations, only because of the variety and difference of the data required from each class in order to determine the basis of taxation. Section 82 (3½) is general, and applies alike to all domestic and all foreign corporations, save and except those specifically excluded under 82 (9).

Construing it as we have, there is nothing inharmonious or inconsistent in our contention. If we were, however, to attempt to say, that the imposition of the tax specifically

upon railroads by Section 82 (6½) removes railroads from the provisions of Section 82 (3½), we should immediately create a conflict in meaning. We would have a provision, and there is a denial of the provision by implication of another subsection of the same section. This would be violative of fundamental rules of construction.

"A statute should be so constructed as to render it a consistent and harmonious whole."

25 *R. C. L.* 1048.

Effect can be given to the full meaning of Section 82 (3½) without in the least detracting from the meaning of 82 (6½). The two are perfectly consistent—just as much so as 82 (3½) is consistent with any other sub-sections of Section 82. Section 82 (3½) is in the nature of a proviso, and as such is applicable to all the other sub-sections to which it is pertinent.

Confirmation of the position here taken is found in the subsequent action of the Legislature, at its extra session of 1921. By the Act passed by the Legislature at the Extra Session, 1921, hereinabove referred to, sub-section 6½ of Section 82 is taken entirely out of Section 82 and transposed to Section 78. And in sub-section 9, Section 82, the word "railroads" is reinserted, having been taken out in 1920, so as to exclude such corporations from the operation of the nine preceding sub-sections. But one logical reason for such amendment is apparent. The Legislature recognized the position we have been contending for herein, and realized that under any proper construction of Section 82, railroads were among those corporations entitled to the benefits of such subsection (3½). They wish to take this exemption from railroads, and in order to effectuate such intention, the act is amended by inserting "railroads" in 82 (9) and by taking sub-section 6½ out of 82 altogether, and putting in another section. The very change shows a

recognition and acknowledgment of the exemption afforded railroads by Section 82 (3½) and 82 (9) prior to such change. But for the existence of the exemption under the law, the amendment itself is meaningless, and without any apparent reason. This is, therefore, a construction by the Legislative body of its own act, and its construction is altogether in harmony with that which has been set forth in this argument.

Chadbourn S. D. & L. Co. v. Parker, 153 N. C. 130.

That the amendatory Act has no retrospective effect is hereinafter shown.

III.

AS A TAX FOR THE PRIVILEGE OF DOING BUSINESS THIS FRANCHISE TAX IS VOID AS BEING AN INTERFERENCE WITH AND A BURDEN UPON INTERSTATE COMMERCE, BECAUSE

(a) It taxes the privilege of engaging in interstate commerce;

(b) The receipts derived therefrom, and

(c) Is a tax on property located beyond the limits of the State.

(a) It taxes the privilege of engaging in interstate commerce and (b) the receipts derived therefrom.

We have already shown that the assessment as fixed by the Commissioner of Revenue is made up by finding the value of the physical property of this company at approximately $39,000,000 and then added an arbitrary amount of approximately $11,000,000 to make up the total assessment of $50,000,000, which is $11,000,000 of intangible property is nothing more nor less than the value of the

earnings of the company in interstate commerce. The rates from interstate commerce are included in this value. The valuable terminals and other property of complainant outside of the State of North Carolina were not deducted before the computation was made. Again the tax is not a tax which was included in the *ad valorem* assessment but is one which is made in addition to the tax upon the property. It attempts to tax the privilege of the railroad company for doing an intrastate and an interstate business in the State of North Carolina. It is not limited to intrastate business, but taxes the privilege of doing both. This franchise tax is measured, not by the amount of intrastate business done, nor yet by the value of the property in the State of North Carolina which is used in intrastate business, but by the value of the property assessed for *ad valorem* purposes, which latter value is made up of the tangible property within the State of North Carolina and of the intangible value, which latter is the value of the franchise as a going concern, used in interstate and intrastate business, and takes into consideration the value of the gross earnings derived from intrastate commerce.

The State of North Carolina cannot tax the privilege of doing an interstate business. The complainant is a corporation of the State of Virginia and no authority to do an interstate business has been conferred upon it by North Carolina.

In order that the State may tax the property of the company at its full value, as a going concern, the proportion in this State of its interstate business is the measure of the value of such property for State purposes and the State must take the whole scheme of *ad valorem* taxation of the company's property into account, and make the net income a part of it, and not make such net income tax an addition to such scheme of taxation.

In the *State Franchise Tax* case, 15 Wallace, 232, decided in 1872, there was involved a law of the State of Pennsylvania imposing a tax upon the transportation of freight into and out of the State of Pennsylvania. In that case the Court held that the tax was a regulation of interstate transportation and, therefore, a regulation of interstate commerce among the States, and that such imposition, whether large or small, was a restraint on the privilege or right to have the subjects of commerce pass freely from one State to another without being obstructed by the intervention of State lines.

In *Fargo v. Michigan,* decided in 1886, 121 U. S. 230, the Court had under consideration a statute of Michigan which laid a tax of two and one-half per cent on the gross amount of their receipts for freight earned within the limits of the State from all persons and corporations running railroad cars within the State. The plaintiff Company was a corporation of New York and had no property in Michigan except rolling stock and office furniture. The Court held that this was clearly a direct regulation of interstate commerce in the light of all prior decisions beginning with the case of *Brown v. Maryland.*

In this case, the question of additional taxation by the State of Michigan was not involved, because the plaintiff company had practically no property in that State. The Court says:

> "But where the business so taxed is commerce itself, and is commerce among the States or with foreign Nations, the constitutional provisions can not thereby be evaded; nor can the States, by granting franchises to corporations engaged in the business of the transportation of persons or merchandise among them which is itself interstate commerce, acquire the right to regulate that commerce, either by taxation or in any other way."

Next there came before the Court the case of *Philadelphia & Southern Mail Steamship Company v. Commonwealth of Pennsylvania,* 122 U. S. 326, decided in 1887. In this case the Court had before it the validity of a Pennsylvania statute levying a tax of eight-tenths of one per cent upon all gross receipts from tolls and transportation, telegraph business or express business of corporations doing business in that State. The Steamship Company derived its receipts from freight and passengers moving between Philadelphia and Savannah in interstate commerce and in foreign trade from New Orleans, exclusively. The Supreme Court held that this was a regulation of interstate and foreign commerce, inconsistent with the commerce clause, and therefore, void. In this case the Court reviewed the cases of:

Robins v. Shelby Taxing District, 120 U. S. 489.
Brown v. Maryland, 125 U. S. 12.
State Franchise Tax Case and Case of State Tax on Railroad Gross Receipts, 15 Wallace 284.

and various other cases which had come before the Court at that time.

In this case the decision of the Gross Receipt Taxes was questioned, but not over-ruled.

In 1888 the Court decided the case of *Western Union Telegraph Company v. Massachusetts,* 125 U. S. 530. In this case certain laws of Massachusetts which imposed a tax upon the capital stock of the Telegraph Company, on account of the property, owned and used by it within that State, the amount of the tax being ascertained by comparing the length of the company's line in that State with the length of its entire line, was under consideration.

The main ground upon which the Telegraph Company

resisted the payment of the tax alleged to be due, was that it was in violation of the rights conferred on the company by Sections 5263 to 5369 of the Revised Statutes of the United States. These statutes gave the Telegraph Company the right to construct and maintain lines of telegraph through and over any portion of the public domain of the United States. The Telegraph Company contended that, as it had accepted the provisions of this section, it had conferred upon it the right to do the business of telegraphing without liability to taxation by a State and that it was a tax upon the franchise of the Company, and the franchise being derived from the United States could not be taxed by a State. The Court says:

> "But by whatever name it may be called, as described in the laws of Massachusetts, it is essentially an excise upon the capital of the Corporation. The laws of that Commonwealth attempt to ascertain the just amount which any Corporation engaged in business within its limits shall pay as a contribution to the support of its government *upon the amount and value of the capital so employed by it therein.*"

The Court says further:

> "The tax in the present case, though nominally upon the shares of the capital stock of the Company, is in effect a tax upon that organization on account of property owned and used by it in the State of Massachusetts; and the proportion of the length of its lines in that State to their entire length throughout the whole country is made the basis for ascertaining the value of that property."

In this case the tax was in fact in lieu of all other taxes although stress was not laid upon this point in the argument before the Court.

Following this case came the cases of:

Ratterman v. Western Union Telegraph Company, 127 U. S. 411,
Leloup v. Port of Mobile, 127 U. S. 640,
Western Union Telegraph Company v. Alabama, 132, U. S. 472.

In the *Ratterman* case, which was decided in 1887, the Court had before it the construction of a statute of the State of Ohio, levying a tax on the receipts of the Telegraph Company which were derived partly from interstate and partly from intrastate commerce. The case below was heard by a Circuit and a District Judge and the question was submitted to the Supreme Court as to whether a single tax assessed upon the receipts of the Telegraph Company, which receipts were partly derived from interstate commerce and partly from intrastate commerce, but which were returned and assessed in gross and without separation or apportionment, was wholly invalid, or invalid only in proportion to the extent that such receipts were derived from interstate commerce.

The Court held that the statute was not wholly invalid, but only invalid in proportion to the extent that such receipts were derived from interstate commerce.

In the *Leloup* case, decided in 1888, the Court held that the general license tax on a telegraph company affects its entire business interstate as well as domestic or internal and is unconstitutional.

In the case of *Western Union Telegraph Company v. Alabama*, 132 U. S. 472, the Court followed its decisions in the *Ratterman* and *Leloup* cases, the same question being presented.

In 1891 the case of *Maine v. Grand Trunk Railway Company*, 142 U. S. 217, was decided. There the Court held constitutional an annual excise tax levied upon all

railroads operated in the State for the privilege of exercising their franchises. The tax was fixed by percentages varying up to a certain limit upon the average gross receipts per mile, multiplied by the number of miles which were in the State when the road extended outside.

This decision, the opinion of which was rendered by Justice Field, was very unconvincing and has been consistently questioned, if not directly overruled. Four judges dissented.

Later, in the case of *Galveston, Harrisburg, etc. Railway Company v. Texas,* 210 U. S. 217, which will be referred to later, Mr. Justice Holmes, in referring to the *Maine* case, says:

> "This seems at first sight like a reaction from the *Philadelphia & Southern Mail Steamship Company* case, but it may not have been. The estimated gross receipts per mile may be said to have been made a measure of the value of the property per mile. That the effort of the State was to reach that value and not to fasten on the receipts from transportation as such was shown by the fact that the scheme of the statute was to establish a system. The buildings of the railroad and its lands and fixtures outside of its right of way were to be taxed locally, as other property was taxed, and this excise with the local tax were to be in lieu of all taxes. The language shows that the local tax was not expected to include the additional value gained by the property being part of a going concern."

Mr. Justice Bradley, in his dissent, stated with great clearness, that constitutional limitations are upon this form of taxation, and his views in his dissenting opinion, expressed in the *Maine* case, were affirmed later on by unanimous consent in the opinion in the *Oklahoma* case, 223 U. S. 298, which will be commented upon later. He says:

> "Justices Harlan, Lamar, Brown and myself dissent from the judgment of the Court in this case. We do

so both on principle and authority. On principle because whilst the purpose of the law professes to be to lay a tax upon the foreign company for the privilege of exercising its franchise in the State of Maine, the mode of doing this is unconstitutional. The mode adopted is the laying of a tax on the gross receipts of the company, and these receipts of course, include receipts for interstate and international transportation between other States and Maine and between Canada and the United States."

After referring to many authorities, he says further:

"We think that the present decision is a departure from the line of these decisions. The tax, it is true, is called a tax on a franchise. It is so-called, but what is it in fact? It is a tax on the receipts of the company derived from international transportation."

In winding up his dissent, he says:

"If the interstate commerce of the country is not, or will not be, handicapped by this course of decision, I do not understand the ordinary principles which govern human conduct."

In *Postal Telegraph Company v. Adams,* 155 U. S. 688, decided in 1895, the Court held that a tax imposed by the laws of Mississippi when enforced against a telegraph company organized under the laws of another State and engaged in interstate commerce in Mississippi, being graduated according to the amount and value of the company's property, measured by miles within the State and being *in lieu of taxes directly levied on the property,* was a tax within the power of the State to impose and the exercise of that power did not amount to a regulation of interstate commerce.

The decision was delivered by Chief Justice Fuller, and in referring to the decision of the Supreme Court of Mississippi, below, says:

"And in the case at bar the Supreme Court in its examination of the liability of plaintiff in error for the taxes in question said: 'It will be thus seen at once that this is a tax imposed upon a telegraph company in lieu of all others, as a privilege tax, and its amount is graduated according to the amount and value of the property measured by miles. It is to be noticed *that it is in lieu of all other taxes, State, county, municipal.* The reasonableness of the imposition appears in the record, as shown by the second count of the declaration and its exhibits, whereby the appellant seems to be burdened in this way with a tax much less than that which would be produced if the property had been subjected to a single *ad valorem* tax.' This exposition of the statute brings it within the rule where *ad valorem* taxes are compounded or commuted for a just equivalent, determined by reference to the amount and value of the property. Being thus brought within the rule, the tax becomes substantially a mere tax on property and not one imposed on the privilege of doing interstate business. The substance and not the shadow determines the validity of the exercise of the power."

In *Western Union Telegraph Company v. Taggart*, 163 U. S. 1, decided in 1896, the Court had before it a statute of Indiana requiring the Telegraph Company to pay taxes upon its property within the State valued at such a proportion of the whole value of capital stock as the length of its line within the State bore to the total length of its lines everywhere, *deducting, however, a sum equal to the value of its real estate and machinery,* subject to local taxation in the State. The Court held that this statute was constitutional and valid, notwithstanding that nothing was in terms directed to be deducted from the value, either for the value of its franchise in the United States or for the value of its real estate and machinery situated and taxed in other States.

In explaining why this statute was held constitutional and valid, Mr. Justice Gray said, page 27:

> "While it takes, as the basis of valuation of the company's property within the State, the proportion of the value of its whole capital stock which the length of its lines within the State bears to the whole length of all its lines, it makes it the duty of the State Board of Tax Commissioners, to make such deductions, on account of a greater proportional value of the Company's property outside the State, or for any other reason, so as to assess its property within the State at its true cash value only."

Here by way of parenthesis, it becomes pertinent to call the Court's attention to the fact *that neither the State Tax Commission of North Carolina nor the Commissioner of Revenue in making the assessment of railroads, made any such deductions as was its duty to do.*

In *Adams Express Company v. Ohio State Auditor,* 165 U. S. 194, decided by the Supreme Court in 1897, the opinion being written by Mr. Chief Justice Fuller, the Court upheld the Ohio statute which required the Board of Assessors to assess and ascertain the value of the property of express, telegraph and telephone companies and in determining the value of the property of such companies in that State to be taxed within the State and assessed as provided in the statute, the Board should be guided by the value of the property as determined by the entire capital stock of the companies and such other evidence and rules as will enable the Board to arrive at the true value in money of the entire properties of the companies within the State in the proportion which the same bore to the entire property of the companies as determined by the value of the capital stock, property, and other evidence and rules as aforesaid.

In this case there was a vigorous dissenting opinion

written by Mr. Justice White, and concurred in by Justices Field, Harlan, and Brown.

The Court says, at page 226:—

> "Assuming the proportion of capital employed in each of the several States through which such a company conducts its operations has been fairly ascertained, while taxation thereon, or determined with reference thereto, may be said in some sense to fall on the business of the company, it is only indirectly. The taxation is essentially a property tax, and, as such, not an interference with interstate commerce."

In his dissenting opinion, Mr. Justice White says:

> "It is elementary that the taxing power of one government cannot be lawfully exerted over property not within its jurisdiction or territory and within the territory and jurisdiction of another. The attempted exercise of such power would be a clear usurpation of authority, and involve a denial of the most obvious conceptions of government. This rule common to all jurisdictions, is peculiarly applicable to the several states of the union, as they are by the Constitution confined within the orbit of their lawful authority, which they cannot transcend without destroying the legitimate powers of each other, and therefore without violating the Constitution of the United States."

The next important case was *Fargo v. Hart*, decided March 21, 1904, 193 U. S. 490. In this case the State of Indiana attempted in assessing the property of the American Express Company, to include in the assessment property situated outside of the State of Indiana, among other property being about $15,500,000 personal property in New York, $3,000,000 in real estate and other property outside of Indiana. The State Board of Tax Commissioners undertook to tax property of the company by treating the whole business as a unit and assessing the company on a proportion of the total value of its property, determined by

the ratio of the mileage in Indiana to the total mileage of the company, excluding its ocean mileage for foreign express business. The company made a return to the Board setting forth in detail what the property was, where situated, how used, and that the value and nature of the property was not disputed, and contended that when these facts were shown the Board was not at liberty to spread the whole value over the whole line equally, and tax by mileage. The decision in this case is written by Mr. Justice Holmes, who afterwards wrote the opinion in the case of *Galveston, Harrisburg, etc., Railway Co., v. Texas.*

The Courts says:

> "The general principles to be applied are settled. A State cannot tax the privilege of carrying on commerce among the States. Neither can it tax property outside of its jurisdiction belonging to persons domiciled elsewhere. On the other hand, it can tax property permanently within its jurisdiction although belonging to persons domiciled elsewhere and used in commerce among the States. And when that property is part of a system and has its actual uses only in connection with other parts of the system, that fact may be considered by the State, in taxing, even though the other parts of the system are outside of the State. The sleepers and rails of a railroad, or the posts and wires of a telegraph company, are worth more than the prepared wood and the bars of steel or coils of wire, from their organic connection with other rails or wires and the rest of the apparatus of a working whole. This being clear, it is held reasonable and constitutional to get at the worth of such a line, in the absence of anything more special, by a mileage proportion. The tax is a tax on property, not on the privilege of doing the business, but it is intended to reach the intangible value due to what we have called the organic relation of the property in the State to the whole system. * * * And this principle, established by many cases, has been ex-

tended by the cases first cited above to the lines of express companies, although those lines are not material lines upon the face of the earth. There is the same organic connection as in the other cases."

However, in 1908, the case of *Galveston, Harrisburg, etc., Railway Company v. Texas,* 210 U. S. 217, came before the Supreme Court of the United States, involving the validity of a Texas statute imposing a tax upon railroads and other corporations owning or controlling any line of railroad within that State, equal to one-tenth of one per cent (and repealing the existing tax law), on gross passenger earnings of railroads. Section 1 of this statute imposes—

> "an annual tax for the year 1905, and for each calendar year thereafter equal to one per centum of its gross receipts, if such line of railroad lies wholly within the State."

and in Section 2 requires a report under oath of—

> "the gross receipts of such line of railroad from every source whatever, for the year ending on the 30th day of June last preceding. * * *
> and immediate payment of the tax, 'calculated on the gross receipts so reported.' "

The lines of railroad of the plaintiff lay wholly within the State of Texas but they connected with other lines and a part, and in some instances the larger part, of the gross receipts was derived from the carriage of passengers and freight in interstate commerce. In the opinion of the Court Mr. Justice Holmes referred to the prior cases, including the case of *Maine v. Grand Trunk, Philadelphia & Southern Mail Steamship Company v. Pennsylvania, Adams Express Company v. Ohio State Auditor, Pullman Company v. Pennsylvania,* and the other cases of like nature involving the construction of taxes upon railroads and public

service corporations, and in commenting upon the case of *Maine v. Grand Trunk Railroad,* he says:

> "In *Maine v. Grand Trunk R. Co., supra,* 'an annual excise tax for the privilege of exercising its franchise' was levied upon every one operating a railroad in the State, fixed by percentages, varying up to a certain limit, upon the average gross receipts per mile multiplied by the number of miles within the State, when the road extended outside. This seems at first sight like a reaction from the *Philadelphia & Southern Mail Steamship Company* case. But it may not have been. The estimated gross receipts per mile may be said to have been made a measure of the value of the property per mile. That the effort of the State was to reach that value, and not to fasten on the receipts from transportation as such, was shown by the fact that the scheme of the statute was to establish a system. The buildings of the railroad and its land and fixtures outside of its right of way were to be taxed locally, as other property was taxed, and this excise with the local tax were to be in lieu of all taxes. *The language shows that the local tax was not expected to include the additional value gained by the property being part of a going concern.* That idea came in later. The excise was an attempt to reach that additional value. The two taxes together fairly may be called a commutation tax." (Italics ours.)

Further he says—

> "By whatever name the exaction may be called, if it amounts to no more than the ordinary tax upon the property or a just equivalent therefor, ascertained by reference thereto, it is not open to attack as inconsistent with the constitution . . . . . The question is whether this is such a tax. It appears sufficiently, perhaps from what has been said, that we are to look for a practical rather than a logical or philosophical distinction. The State must be allowed

to tax the property, and to tax it at its actual value as a going concern. On the other hand, the State can not tax the interstate business. The two necessities hardly admit of an absolutely logical reconciliation. Yet the distinction is not without sense. When a legislature is trying simply to value property, it is less likely to attempt or to effect injurious regulation than when it is aiming directly at the receipts from interstate commerce. A *practical line can be drawn by taking the whole scheme of taxation into account. That must be done by this Court as best it can. Neither the State Courts nor the legislature, by giving a tax a particular name or by the use of some form of words can take away our duty to consider its nature and effect.* If it bears upon commerce among the States so directly as to amount to a regulation in a relatively immediate way, it will not be saved by name or form. *Stockard v. Morgan,* 185 U. S. 27, 37, 46 L Ed 785, 794, 22 Sup. Ct. Rep. 576; *Asbel v. Kansas,* 209 U. S. 251, 254, 256, ante, 778, 780, 781, 28 Sup. Ct. Rep. 485.

"We are of the opinion that the statute levying this tax does amount to an attempt to regulate commerce among the States. The distinction between a tax 'equal to' 1 per cent of gross receipts, and a tax of 1 per cent of the same, seems to us nothing except where the former phrase is the index of an actual attempt to reach the property and to let the interstate traffic and the receipts from it alone. We find no such attempt or anything to qualify the plain inference from the statute, taken by itself. *On the contrary we rather infer from the judgment of the State Court and from the argument on behalf of the State that another tax on the property of the railroad is upon a valuation of that property taken as a going concern. This is merely an effort to reach the gross receipts not even disguised by the name of an occupation tax and in no way helped by the words 'equal to.'*" (Italics ours.)

The following propositions are laid down in this case:

1st. The State may tax the property of an interstate corporation and tax it at its actual value as a going concern.

2nd. But it can not tax the interstate business.

3rd. That in determining whether the tax is void the whole scheme of taxation must be taken into account.

4th. That neither the State Court nor the legislature, by giving a tax a particular name or by use of some form of words, can take away the duty of the Court to consider its nature and effect.

5th. That if it bears upon commerce between the States so directly as to amount to a regulation in a relatively immediate way, it will not be saved by name or form.

6th. That the Supreme Court of the United States, in deciding the case of *Maine v. Grand Trunk Railway,* decided, in upholding the statute in that case, that the estimated gross receipts per mile were the measure of the value of the property, and that the effort of the State was to reach that value, and not fasten on the receipts from transportation in the State and that this was shown in the scheme of the statute to establish the assessment.

In the case of *Western Union Telegraph Company v. Kansas,* 216 U. S. 1, and the case of *Pullman Company v. Kansas,* 216 U. S. 56, the Supreme Court declared invalid under the Commerce and Due Process Clauses of the Federal Constitution, as necessarily amounting to a burden and tax on interstate commerce, and property located or used outside of the State, the statute of Kansas imposing a charter fee of a given percentage upon the entire authorized capital stock of foreign corporations as a condition of their continuing to do local business.

On page 26, Mr. Justice Harlan, in writing the opinion of the Court says:

> "We are aware of no decision by this Court holding that a State may by any device or in any way, whether by a license tax in the form of a 'fee,' or otherwise, burden the interstate business of a corporation of another State, although the State may tax the corporation's property regularly or permanently located within its limits, where the ascertainment of the amount assessed is made 'dependent' *in fact* on the value of its property *situated within the State.*"

Following this case was the case of *Ludwig v. Western Union Telegraph Company,* 216 U. S. 146, in which the Court reviewed the statute of the State of Arkansas requiring foreign corporations to pay a tax based on their capital stock which represented its property and business everywhere inside and outside of the State. That opinion was also written by Justice Harlan, and the statute was declared illegal and the State enjoined from enforcing it.

In 1911 the Court decided the case of *Flint v. Stone Tracy Company,* 220 U. S. 107, involving the validity of the Act of Congress known as the Corporation Tax Law. The Court again approved its holding in the *Galveston* case and *Kansas* case, and while upholding the validity of the tax, specifically stated that there was nothing in this case contrary to the ruling in those. The Court says:

> "That the standard of measure of a tax is not *per se* conclusive either of its validity or invalidity and holds that the distinction lies between the attempt to tax the property as such and to measure the legitimate taxes upon the privileges involved in the use of the property."

In 1912 the Court decided the case of *Meyer, Auditor of the State of Oklahoma v. Wells Fargo Company,* 223

U. S. 298. In that case it reviewed a statute of Oklahoma *levying a gross revenue tax* upon corporations *in addition* to the taxes levied and collected upon *ad valorem basis upon property and assets of such corporation* equal, in the case of a public service corporation operating within and partly without the State, to such per cent of its gross receipts as the portion of its business done within the State bore to the whole of its business, with a proviso for fixing a different proportion, if the same clearly represented the proportion which the gross receipts of any such public service corporation for any year within the State bore to its gross receipts. The Court says:

> "The plaintiff's receipts are largely from commerce among the States, and it also receives large sums as income from investments in bonds and land all outside of the State of Oklahoma. So that it is evident that if the tax is what it calls itself it is bad on the former ground, and that whatever it is it is bad on the latter. *Fargo v. Hart,* 193 U. S. 490. In that case the tax was proportioned to mileage and it was held that it could not be sustained when, although purporting to be a tax on property, it took into account, in order to increase proportionately the value of the mileage within the State, valuable property outside of it. The same principle would apply to a property tax measuring the total property by the total gross receipts increased by the special outside sources of income and taxing a proportion of this total fixed by the ratio of business within the State to that outside. But we see no warrant for calling the tax a property tax. It is so similar to the Texas statute held bad in *Galveston, Harrisburg & San Antonio Railway Company v. Texas,* 210 U. S. 217, as to show that, if one is not copied from the other, they have a common source. It would be

possible only by some extraordinary turn of ingenuity to sustain this after condemning that.

"It was argued in some detail that taking into account the rest of the act and other statutes passed later at the same session this really was a property tax. But the scope and purport of the act, so far as it affects express companies, are too obvious to admit such a view. The tax is 'in addition to the taxes levied and collected upon an *ad valorem* basis.' Even if we read the words which follow without a comma, viz.: 'upon the property and assets of such corporation,' as not qualifying those which immediately precede but as attempting to characterize the 'gross revenue tax' as a tax on such property and assets, nevertheless all the property and assets are the subject of the *ad valorem* taxes referred to. *Therefore this tax can not be an attempt to reach the value of what is by the law to be valued and taxed in a different way. It would be difficult to apply to a tax levied in these days the explanation of Maine v. Grand Trunk Ry. Co., 142 U. S. 217, given in Galveston, Harrisburg & San Antonio Ry. Co., v. Texas, 210 U. S. 217, 226, Flint v. Stone Tracy Co., 220 U. S. 107, 162-165, and to suppose it intended to reach only the additional value given by its being part of a going concern to property already taxed in its separate items. There is nothing sufficient to indicate such a limitation, and for the reasons given above on the authority of Fargo v. Hart, 193 U. S. 490, it is plain that the gross receipts from all sources could not have been used as a means for estimating the going value of the property in the State. We may add in this connection that this same requirement as to the total gross receipts shows that it is impossible to save the constitutionality of the act by construing it as referring only to the receipts from commerce wholly within the State.*" Pp. 299, 301. (Italics ours.)

In the *Galveston* case the Chief Justice and Justices Harlan, White and McKenna dissented. That decision was written in 1908, and it is significant that four years later in the *Oklahoma* case there was not a single dissent expressed by any member of the Court, the opinion in that case being by Mr. Justice Holmes, who wrote the opinion in the *Galveston* case, and the Court comes back to principles announced by Mr. Justice Bradley in his dissenting opinion in the *Maine* case.

At the same term of Court at which the *Oklahoma* case was decided the Court decided the case of *United States Express Company v. Minnesota,* 223 U. S. 335, and upheld the statute of the State of Minnesota which taxed express companies on property employed within said State at six per cent of the gross receipts proportioned, according to mileage, but the Court upheld this statute *because this tax was in lieu of all other taxes and therefore it was an exercise in good faith of the taxation power, and not an unconstitutional burden upon interstate commerce.*

Note the distinction which the Court makes between this case and the *Galveston* and *Oklahoma* cases. The Court said:

> "Appreciating the difficulty emphasized in the *Galveston* case of drawing the line between taxes that burden interstate commerce and those whereby the Legislature is simply undertaking to impose a property tax within its legitimate power, measured in part by the income from interstate commerce transactions, how does the present case stand? The Supreme Court of Minnesota construed the tax to be a property tax, measured by the gross earnings within the State, which, under their construction of the tax, included the earnings herein questioned. That Court held that the statute was part of a system long in force in Minnesota, passed under the authority of the State Constitution, and was intended to afford a means of

valuing the property of express companies within the State. While the determination that the tax is a property tax measured by gross receipts is not binding upon this Court, we are not prepared to say that this conclusion is not well founded, in view of the provisions and purposes of the law.

"The statute itself provides that the assessments under it 'shall be in lieu of all taxes upon its property.' In other words that is the only mode prescribed in Minnesota for exercising the recognized authority of the State to tax the property of express companies as going concerns within its jurisdiction. If not taxed by this method the property is not taxed at all.

"The tax in the present case is not like those held invalid in the Galveston case and the Oklahoma case, being in addition to other State taxation reaching the property of all kinds of the express company. The tax to be collected in part from the earnings of interstate commerce was part of a scheme of taxation seeking to reach the value of the property of such companies in the State, measured by the receipts from business done within the State. The statute was not aimed exclusively at the avails of interstate commerce (*Philadelphia & S. Mail S. S. Co. v. Pennsylvania, supra*), but, as in the *Maine* case, was an attempt to measure the amount of tax within the admitted power of the State by income derived, in part, from the conduct of interstate commerce. The property of express companies, being much of it an intangible character, is difficult to reach and properly assess for taxation. This difficulty led this Court in *Adams Express Co. v. Ohio State Auditor,* 165 U. S. 194, 41 L. ed. 683, 17 Sup. Ct. Reps. 305 S. E., 166 U. S. 185, 41 L. ed. 965, 17 Sup. Ct. Reps. 604, to sustain a tax upon the property of an express company, which property was considered a part of one money-earning organization extending through many States."

(Italics ours.)

In the *Minnesota* case, the Minnesota Court had declared

this statute was part of a system long in force in Minnesota and was intended to afford a means of valuing property of express companies within that State. In North Carolina no such system of taxation has ever grown up. The taxes in North Carolina have, since the Constitution of the State, been levied on property of all persons alike, but the Legislature of North Carolina has attempted to adopt a new scheme of taxation in violation of the Constitution of North Carolina. It attempts to levy taxes on railroad corporations which are not levied upon any other class of property, and the statutes have no virtue as being classification statutes. These taxes are not in lieu of *ad valorem* taxes levied against the property of railroads in North Carolina.

In the case of *Baltic Mining Company v. Massachusetts,* 231 U. S. 68, decided in 1913, the Supreme Court declared constitutional an excise tax imposed by the State of Massachusetts upon a certain class of corporations measured by the authorized capital stock of such corporations, but in this case the Court distinguished and upheld, particularly, the *Galveston, Western Union, Pullman* and *Oklahoma* cases, on the ground that by the facts in those cases there had been no attempt to separate the interstate business from the intrastate business, while in the *Baltic Mining Company* case such an attempt has been successfully made. The taxes in the *Baltic* case were held valid as applied to corporations which were engaged in carrying on business *not itself interstate commerce* though their products were sold and shipped in interstate commerce and which are carrying on purely domestic and local business quite separate from their interstate transactions.

In distinguishing this case from the *Galveston* and other cases, the Court said:

"There was no attempt to separate the interstate from

the intrastate business by the limitation of State lines in this prosecution."

Next the Court had before it the *Ohio Tax* cases, 232 U. S. 576, decided in 1914. In that case the Court reviewed the Ohio statutes imposing an excise tax of four per cent on gross interstate earnings of railroad companies from business done within the State, "excluding therefrom all earnings derived wholly from interstate business or business done for the Federal Government."

In upholding this statute the Court said (pages 591-593):

> "It is said that the present act is a re-enactment, without material change so far as present purposes are concerned, of an act of March 10, 1910; that prior to the latter act a law known as the Cole Law was in force, under which each railroad was compelled to pay a tax equal to one per centum of its entire gross earnings, 'computed by multiplying the average gross earnings per mile over the entire system, by the number of miles in Ohio; that this act was obnoxious to the 'commerce clause' of the Federal Constitution, for the reasons that entered into the decision of this Court in *Galveston, Harrisburg, etc., Railway Co. v. Texas*, 210 U. S. 217; that after the decision of this case in May, 1908, it was anticipated that the Cole Law would probably be held unconstitutional (as it has since been held by an inferior State Court in Ohio), and so the Legislature contrived the Act of March 10, 1910, for the purpose of imposing a tax upon the railroads as heavy as that imposed by the Cole Law, while avoiding the form of that enactment; and that for this reason the act of March 10, 1910, increased the percentages in accordance with which the taxes were to be severally determined as follows: Railroads and pipe line companies, from 1 to 4 per cent; express and telegraph companies, from 1 to 2 per cent; all other utilities, from 1 to 1-1/5 per cent, but that instead of taking all the gross earnings, the new percentages were to be applied only to intrastate earnings. It is contended that the increase

in the percentages as to railroad and pipe line companies was due to the fact that it was conceived that about three-fourths of their business was interstate, and that therefore a tax of 4 per cent, on the intrastate earnings would be about equal to a tax of 1 per cent, on the total; in other words, that the tax rate was increased fourfold because such utilities were engaged in interstate commerce.

"The tax is, however, in substance as well as in form, an excise or privilege tax. Its reasonableness, unless some Federal right be violated, is within the discretion of the State Legislature. We have seen that the classification adopted cannot be deemed illusory; that is, there is no apparent violation of the equality provisions of the State Constitution or of the equal 'protection clause' the State of the Fourteenth Amendment, although railroad and pipe line companies are required to pay at the rate of four per cent of the annual intrastate earnings, while other public service corporations pay a less percentage. It is, of course, entirely settled that a State cannot, consistently with the Federal control of interstate commerce, lay such taxes, either upon property rights or upon franchises or privileges, as in effect to burden such commerce. But the line is not always easily drawn, as recent cases sufficiently show. *Galveston, Harrisburg, etc., Ry. Co. v. Texas,* 210 U. S. 217, 225, 229; *United States Express Co. v. Minnesota,* 223 U. S. 335, 344; *Williams v. Talladega,* 226 U. S. 404, 416; *Baltic Mining Co. v. Massachusetts,* 231 U. S. 68, 82.

"The present act does not on its face manifest a purpose to interfere with interstate commerce, and we are unable to accept the historical facts alluded to as sufficient evidence of a sinister purpose, such as would justify this Court in striking down the law. We could not do this without in effect denouncing the Legislature of the State as guilty of a conscious attempt to evade the obligations of the Federal Constitution. Assuming the law was changed in 1910, because of a fear that the Cole Law would be held unconstitutional, the

mere fact that, while excluding interstate earnings from the multiplicand, the multiplier was increased, is not of itself deemed sufficient evidence of an unlawful effort to burden a privilege that is not a proper subject of State taxation."

In the case of *Singer Sewing Machine Company v. Brickell,* 233 U. S. 304, decided in 1914, the Court had before it the validity of an Alabama statute, levying a tax of $50.00 annually against each corporation, etc., selling or delivering sewing machines for each county in which said articles were sold or delivered, and for each wagon or team used for delivering same an additional sum of $25.00; with a tax equal to fifty per cent of the above for county purposes. The Singer Sewing Machine Company was a corporation of the State of New Jersey and brought its bill to enjoin the collection and enforcement of the taxes.

The Court in holding the tax constitutional, after referring to the cases of *Leloup v. Mobile,* the *Galveston, Kansas, Oklahoma,* and other like cases, and upholding those cases said:

> "The statute now under consideration differs materially, in that it deals separately with the business as conducted in each county of the State, and provides for separate taxes to be laid for each county. And the facts as averred in the bill of complainant show that with respect to all of the counties in which appellant does business, excepting only the County of Russell, there is no element of interstate commerce."
>
> "It would be going altogether too far to say that appellant, being properly taxable, and with out the least interference with interstate commerce, in twenty-nine counties of the State could obtain immunity from all such taxation by establishing in one county a system of business that involved transactions in interstate commerce."

In *Choctaw & Gulf Railroad Company v. Harrison,* 235

U. S. 292, also decided in 1914, the Court had before it the construction of a statute of Oklahoma imposing upon coal mining companies or producers a tax upon the gross sales of coal dug from mines belonging to the Choctaw and Chickasaw Indians which was leased and operated by the railroad company. The contention was that that Oklahoma statute provided for gross revenue taxes and this was resisted upon the ground that in reality the demand was for an occupation or privilege tax to which the railroad company could not be lawfully subjected, because as a Federal instrumentality, acting on Congressional authority, it had leased and was operating the mines to which the Indians held title.

The Court said:

> "From the foregoing it seems manifest that the agreement with the Indians imposed upon the United States a definite duty in respect to opening and operating the coal mines upon their lands, and appellant is the instrumentality through which this obligation is being carried into effect. Such an agency cannot be subjected to an occupation or privilege tax by a State. *McCullough v. Maryland,* 4 Wheat, 316-425; *Farmers' Bank v. Minnesota,* 232 U. S. 516. But it is insisted that the statute rightly understood prescribed only an *ad valorem imposition* on the personal property owned by appellant—the coal at the pit's mouth —which is permissible according to many opinions of the Court. *Thomson v. Pacific Railroad,* 9 Wall. 579; *Union Pacific Railroad v. Peniston,* 18 Wall. 5; *Central Pacific Railroad v. California,* 162 U. S. 91; *Thomas v. Gay,* 169 U. S. 264.
>
> "The Court below held that the effect of the Act was to lay a valid tax on personalty and the same result was subsequently reached by the Supreme Court of Oklahoma. *McAlester-Edwards Coal Co. v. Trapp* 38 Oklahoma, 792-794. The United States District Court for the Western District of Oklahoma arrived at a different conclusion. *Missouri, Kansas and Texas Railway v. Meyer,* 204 Federal Rep. 140.

"Neither State Courts nor Legislatures by giving a tax a particular name, or by the use of some form of words, can take away our duty to consider its real nature and effect. Galveston, Harrisburg & San Antonio Ry. v. Texas, 210 U. S. 217-227.

"It is unnecessary to consider the power of the State of Oklahoma to treat coal dug from mines operated by the appellant as other personalty and to subject them to a uniform *ad valorem* tax; for it seems to us clear that the Act of 1908 provided for no such imposition. *Its very language imposes a 'gross revenue tax which shall be in addition to the taxes levied and collected upon an ad valorem basis.' We cannot therefore, conclude that the gross receipts were intended merely to represent the measure of the value of property liable to a general assessment * * * Provision is made for determining that upon a different basis. Oklahoma v. Wells Fargo & Company,* 223 U. S. 298, 301. The requirement is not on account of property owned on a given day, as is the general custom where *ad valorem* taxes are provided for and as the Oklahoma laws require; but the manifest purpose is to reach all sales and secure a certain percentage thereof —a method commonly pursued in respect of license and occupation taxes. *Pullman Company v. Knott, ante,* p. 23.

"A tax upon a merchant's, manufacturer's, or miner's gross sales is not the same thing as one on his stock treated as property. Cooley on Taxation (3rd Ed.), p. 1095. The former is upon his business. In effect, the Oklahoma act prescribes an occupation tax (*Ohio Tax* cases, 232 U. S. 576, 592); and, accepting as true, the allegations of appellant's bill, we think it cannot lawfully be subjected thereto." (Italics ours.)

This tax *was in addition to the taxes levied and collected upon an ad valorem basis upon mining property.*

In December, 1914, the case of *St. Louis Southwestern Railroad v. Arkansas,* 235 U. S. 350, was decided. In that

case the Court had under consideration the validity of an Act of Arkansas requiring foreign corporations doing business in that State and owning and using a part or all of its plant in the State, to pay for the privilege of exercising its franchise in that State, a tax of one-twentieth of one per cent each year upon the proportion of the outstanding capital stock of the corporation represented by the property owned and used in the business transacted in that State.

This was the provision of Act No. 112 and the other Act before the Court was No. 251, providing that franchises (other than the right to be a corporation) of all railroads, express, telegraph and telephone companies, are declared to be property for the purpose of taxation and the value of their franchises are to be considered by the assessing officers when assessing the property of such corporations. The Supreme Court of Arkansas decided that the tax in the case of foreign corporations was paid upon the privilege of evercising their corporate powers within the State and that the act was valid. The Supreme Court, in an opinion by Mr. Justice Pitney, says:

> "Upon the mere question of construction we are of course concluded by the decision of the State Court of last resort. But when the question is whether a tax imposed by a State deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast nor upon the characterization of that scheme as adopted by the State Court. We must regard the substance, rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the State."

The Court still cites with approval the *Galveston, Kansas* and other like cases. The Court accepted the construction placed upon Act No. 112 by the Arkansas Court, that it

imposed a franchise tax upon the right to exist as a corporation or to exercise corporate powers within the State, the amount of the tax being fixed solely by reference to the property of the corporation that is within the State and used in the business transacted in the State, and excluded any imposition upon or, interference with, interstate commerce.

Further the Court says:

> "The tax, as will be observed, is not in any wise based upon the receipts of the railroad company, from interstate commerce either taken alone or in connection with receipts from its intrastate business. Since, therefore, the amount of the imposition is not made to fluctuate with the volume or the value of the business done we are relieved from those difficulties that arise where State taxes are based upon the earnings of interstate carriers."

In 1917 the Court decided the case of *Looney v. Crane*, 245 U. S. 178. There the question before the Court was the constitutionality of a statute of the State of Texas requiring foreign corporations doing business in that State to pay a permit tax based upon the capital stock and a franchise tax based upon the capital stock, surplus and undivided profits. The Court held this statute unconstitutional, the opinion being delivered by Mr. Chief Justice White, and there being no dissenting opinion. In this case the Chief Justice with his usual clearness presents an elaborate argument showing the difference between that class of cases under which are the *Kansas, Oklahoma, Ludwig* and *Galveston* cases, on the one hand, and the *Baltic Mining Company, St. Louis Southwestern Railroad v. Arkansas,* and that class of cases, on the other hand. He particularly lays stress upon the fact that the latter in no particular overruled the former, but were expressly again approved.

As the exposition of the law is so clearly and succinctly set out in that case, we take the liberty of quoting at length from this opinion:

> "It may not be doubted under the case stated that, intrinsically and inherently considered, both the permit tax and the tax denominated as a franchise tax were direct burdens on interstate commerce, and, moreover, exerted the taxing authority of the State over property and rights which were wholly beyond the confines of the State, and not subject to its jurisdiction, and therefore constituted a taking without due process. It is also clear, however, that both the permit tax and the franchise tax exerted a power which the State undoubtedly possessed; that is, the authority to control the doing of business within the State by a foreign corporation and the right to tax the intrastate business of such corporation, carried on as the result of permission to come in. The sole contention, then, upon which the acts can be sustained, is that although they exerted a power which could not be called into play consistently with the Constitution of the United States, they were yet valid because they also exercised an intrinsically local power. But this view can only be sustained upon the assumption that the limitations of the Constitution of the United States are not paramount, but are subordinate to and may be set aside by State authority as the result of the exertion of a local power. In substance, therefore, the proposition must rest upon the theory that our dual system of government has no existence because the exertion of the lawful powers of the one involves the negation or destruction of the rightful authority of the other. But original discussion is unnecessary, since to state the proposition is to demonstrate its want of foundation and because the fundamental error upon which it rests has been conclusively established. Indeed, the cases referred to were concerned in various forms with the identical questions here involved, and authoritatively settled that the

States are without power to use their lawful authority to exclude foreign corporations by directly burdening interstate commerce as a condition of permitting them to do business in the State, in violation of the Constitution, or, because of the right to exclude, to exert the power to tax the property of the corporation and its activities outside of and beyond the jurisdiction of the State, in disregard, not only of the commerce clause, but of the due process clause of the 14th Amendment. *Western U. Tel. Co. v. Kansas,* 216 U. S. 154, L. ed. 355, 30 Sup. Ct. Rpts. 190; *Pullman Company v. Kansas,* 216 U. S. 56, 54, L. ed. 378, 30 Sup Ct. Rpts. 232; *Ludwig v. Western U. Tel. Co.,* 216 U. S. 146, 54 L. ed. 423, 30 Sup. Ct. Rpts. 280; *International Text Book Company v. Pigg,* 217 U. S. 91, 54 L. ed. 678, 27 LRA (NS) 493, 30 Sup. Ct. Rpts. 481, 18 Ann. cases 1103; *Atchison T. & S. F. R. R. v. O'Connor,* 223 U. S. 280, 283, 56 L. ed. 436, 32 Sup. Ct. Rpts. 216, Ann. cases 1913C, 1050.

"The dominancy of these adjudications is plainly shown by the fact that, as the result of the decision in the leading case (*Western U. Tel. Co. v. Kansas, supra*), the Supreme Court of the State of Texas, recognizing the repugnancy of the Permit Tax Law here in question to the Constitution of the United States, enjoined its enforcement. (*Western U. Tel. Co. v. State,* 103 Tex. 306, 126 SW 1197), and following that ruling the Legislature of the State has amended both the Permit Tax Law and the Franchise Tax Law now before us, presumably in an effort to cure the demonstrated repugnancy of the statutes, before amendment, to the Constitution of the United States. Of course whether the amendments as adopted accomplished the purpose intended is a matter which we are not called upon to consider and as to which we express no opinion.

"But, despite the controlling decisions dealing with cases in substance identical in fact and principle with the case here presented, and the effect

given to them in Texas as to one of the statutes here involved, it is now insisted that the statutes are not repugnant to the Constitution of the United States, and that error was committed in deciding to the contrary. This is rested on cases decided since those to which we have referred. *Baltic Mining Co. v. Mass.*, 231 U. S. 68, 58 L. ed. 127, 34 Sup. Ct. Rep. 15; *St. L. Southwestern R. Co. v. Arkansas*, 235 U. S. 350, 59 L. ed. 265; 35 Sup. Ct. Rep. 99; *Kansas City, Ft. S. & M. R. Co. v. Botkin*, 240 U. S. 227, 69 L. ed. 617, 36 Sup. Ct. Rep. 261; *Kansas City M. & B. R. Co. v. Stiles*, 242 U. S. 111, 61 L. ed. 176; 37 Sup. Ct. Rep. 58. The proposition is, therefore, that these cases overruled the previous decisions. The incongruity of the contention will be manifest when it is observed that not only did the cases relied upon contain nothing expressly purporting to overrule the previous cases, but, on the contrary, in explicit terms declared that they did not conflict with them, and that they proceeded upon conditions peculiar to the particular cases.

"The demonstration of error in the argument which results from this situation might well cause us to go no further in its consideration. In view, however, of the gravity of the subject to which the argument relates and the misconception and resulting confusion in doctrine which might result from silence, we briefly notice it. In the first place it is apparent in each of the cases that, as the statutes under consideration were found not to be on their face inherently repugnant either to the commerce or due process clause of the Constitution, it came to be considered whether, by their necessary operation and effect, they were repugnant to the Constitution in the particulars stated, and this inquiry, it was expressly pointed out was to be governed by the rule long ago announced in *Postal Telegraph Cable Co. v. Adams*, 155 U. S. 688, 698, 39 L. Ed. 311, 316; 5

> Interstate Com. Rep. 1, 15 Sup. Ct. Rep. 268, 360, that 'the substance, and not the shadow, determines the validity of the exercise of the power.' In the second place, in making the inquiry stated in all of the cases, the compatibility of the statutes with the Constitution which was found to exist resulted from particular provisions contained in each of them which so qualified and restricted their operation and necessarily their effect as to lead to such result. These conditions related to the subject-matter upon which the tax was levied, or to the amount of taxes in other respects paid by the corporation, or limitations on the amount of the tax authorized when a much larger amount would have been due upon the basis upon which the tax was apparently levied. It is thus manifest on the face of all the cases that they in no way sustained the assumption that, because a violation of the Constitution was not a large one, it would be sanctioned, or that a mere opinion as to the degree of wrong which would arise if the Constitution were violated was treated as affording a measure of the duty of enforcing the Constitution.
>
> It follows, therefore, that the cases which the argument relies upon do not in any manner qualify the general principles expounded in the previous cases upon which we have rested our conclusions, since the latter cases rested upon particular provisions in each particular case, which, it was held, caused the general and recognized rule not to be applicable."

Following this the Court decided the case of *International Paper Company v. Massachusetts,* 246 U. S. 135, in March, 1918. The Court reversed the decision of the State Judicial Court of Massachusetts dismissing the petition of a foreign corporation to recover back the amount of excise tax as a condition of doing business in that State. The plaintiff was a New York corporation. There

were two statutes under consideration; one an act of 1909 requiring that every corporation at the time of filing its annual certificate of condition each year to pay an excise tax to be assessed by the Tax Commissioner of 1-50 of 1 per cent of the par value of its authorized capital stock as stated in the annual certificate of condition not exceeding two thousand dollars, and the statute of 1914 imposing upon every foreign corporation subject to the Statute of 1909 at the time of filing its annual certificate of condition, in addition to the tax levied by the act of 1909, to pay an excise tax to be assessed by the Tax Commissioner of 1-100 of 1 per cent of the par value of its authorized capital stock in excess of ten million dollars. The capital stock of the plaintiff company was $45,000,000. Its total assets were not less than $39,-000,000 or $40,000,000 of which not less than 1¾ per cent were located or invested in Massachusetts. Again, in this case there were no dissents. The Court refers to the *Kansas* and *Ludwig* cases and the case of *Pullman Company v. Kansas, supra,* and upholds these cases laying down six (6) propositions. Among others, that the State consistently with the due process clause of the Constitution cannot tax the property belonging to a foreign corporation and neither located nor used within the confines of the State, nor could it regulate directly or indirectly interstate commerce, and that the Court would look to the essential and practical features of the statute rather than its form or local characterization. The Court said:

> "But the immunity of interstate commerce from state taxation is not confined to what is done by the carriers in such commerce. On the contrary, it is universal and covers every class of interstate commerce, including that conducted by merchants and trading companies. And as respects the power of a

state to tax property beyond its jurisdiction belonging to a foreign corporation, it is of no moment whether the corporation be a carrier or a trading company, for a state is wholly without power to impose such a tax."

The Court then refers to the case of *Looney v. Crane*, just above cited, and to its decision in that case. Referring to the case of the *Western Union Telegraph Company v. Kansas* and then to the line of cases beginning with *Baltic Mining Company v. Massachusetts*, and ending with *Kansas City, M. & B. R. R. Co. v. Stiles*, the Court again quotes from the *Looney* case with approval, following which the Court says:

> "That case" (the Looney case) "and those which it followed and reaffirmed are fully decisive of this. The statutes then and now in question differ only in immaterial details, and the circumstances of their application or attempted application are essentially the same. In principle the cases are not distinguishable."

The Court held that the Massachusetts statutes were unconstitutional as placing a prohibited burden on interstate commerce and as being laid on property of foreign corporations located and used beyond the jurisdiction of the State.

In summarizing the law as already declared the Court lays down the following propositions:

> "1. The power of a State to regulate the transaction of a local business within its borders by a foreign corporation—meaning a corporation of a sister State—is not unrestricted or absolute, but must be exerted in subordination to the limitations which the Constitution places on State action.
>
> "2. Under the commerce clause exclusive power to regulate interstate commerce rests in Congress, and a State statute which either directly or by its necessary operation burdens such commerce is invalid,

regardless of the purpose with which it was enacted.

"3. Consistently with the Due Process Clause, a State can not tax property belonging to a foreign corporation and neither located nor used within the confines of the State.

"4. That a foreign corporation is partly, or even chiefly, engaged in interstate commerce does not prevent a State in which it has property and is doing a local business from taxing that property and imposing a license fee or excise in respect of that business, but the State can not require the corporation, as a condition of the right to do a local business therein, to submit to a tax on its interstate business or on its property outside the State.

"5. A license fee or excise of a given per cent of the entire authorized capital of a foreign corporation doing both a local and interstate business in several States, although declared by the State imposing it to be merely a charge for the privilege of conducting a local business therein, is essentially and for every practical purpose a tax on the entire business of the corporation, including that which is interstate, and on its entire property, including that in other States; and this because the capital stock of the corporation represents all its business of every class and all its property, wherever located.

"6. When tested, as it must be, by the substance—its essential and practical operation—rather than its form or local characterization, such a license fee or excise is unconstitutional and void as illegally burdening interstate commerce and also as wanting in due process because laying a tax on property beyond the jurisdiction of the State."

After this the Court decided the case of *Union Tank Line v. Wright,* on March 29th, 1919, 249 U.S. 275, holding a statute of Georgia which made the ratio that the miles of railway in that State over which moved oil tank cars of

foreign equipment companies (not carrying on business in the State and not having any office there) bore to the total mileage so traversed by these cars in all of the States, the sole basis of assessment for State taxation of the property of such corporation, as a method so arbitrary and produced results so unreasonable as to enforce the tax, will take the property without due process of law and unduly burden interstate commerce, where the valuation thus arrived at is nearly $300,000 and the value of the average number of tank cars within the State during the year, the only property of the corporation in the State, is less than $50,000. The opinion was written by Mr. Justice McReynolds, and he says, page 282:

> "A State may not tax property belonging to a foreign corporation which has never come within its borders,—to do so under any formula would violate the Due Process Clause of the 14th Amendment. . . . . But if the plan pursued is arbitrary and the consequent valuation grossly excessive, it must be condemned because of conflict with the commerce clause of the 14th Amendment or both."

Then in the case of *Wallace v. Hines,* 253 U.S. 66, decided May 3rd, 1920, the Supreme Court of the United States was called upon to review a decree of the United States District Court for the District of North Dakota enjoining the enforcement of State taxes on foreign interstate railroad companies. This case is very similar to the case at bar. The tax there was made and laid upon all of the property of the railroad company in the State, put a cloud upon their title, delay in payment was visited with large penalties and the Court held that therefore there was no adequate remedy at law and proceeded to the question of the illegality of the tax. The statute levied a tax only on corporations of fifty cents for each $1,000.00 actually in-

vested in the transaction of business in the State; provided, that in the case of corporations engaged in business partly within and partly without the State, the investment in the State shall be held to mean that proportion of its entire stock and bond issues which its business within the State bears to its total business within and without the State, and where such business within the State is not otherwise more easily and certainly separable from its entire business within and without the State, the business within the State shall be held to mean such proportion of the entire business within and without the State as the property of such corporation within the State bears to its entire property employed in such business both within and without the State; provided however, that in the case of a railroad, telegraph, etc., company, having lines that enter into or extend out of or across the State, property within the State shall be held to mean that proportion of the entire property of such corporations engaged in such business which its mileage within the State bears to the entire mileage within and without the State.

Mr. Justice Holmes delivered the unanimous opinion of the Court, and says:

> "It will be seen that it purports to be a *special excise tax upon doing business* in the State. As the law is administered, the Tax Commissioner fixes the value of the total property of each railroad by the total value of its stocks and bonds, and assesses the proportion of this value that the *main track mileage* in North Dakota bears to the main track of the whole line. But, on the allegations of the bill, which is all that we have before us, the circumstances are such as to make that mode of assessment indefensible. North Dakota is a State of plains, very different from the other states, and the cost of the roads there was much less than it was in mountainous regions that the roads had to traverse. The State is mainly agricultural. Its markets are outside its boundaries, and most of the distributing

centers from which it purchases also are outside. It naturally follows that the great and very valuable terminals of the roads are in other States. So, looking only to the physical track, the injustice of assuming the value to be evenly distributed according to main track mileage is plain. But that is not all.

"The only reason for allowing a State to look beyond its borders when it taxes the property of foreign corporations is that it may get the true value of the things within it, when they are part of an organic system of wide extent, that gives them a value above what they otherwise would possess. The purpose is not to expose the heel of the system to a mortal dart, not, in other words, to open to taxation what is not within the State. Therefore, no property of such of an interstate road situated elsewhere can be taken into account unless it can be seen in some plain and fairly intelligible way that it adds to the value of the road and the rights exercised in the State. Hence the possession of bonds secured by mortgage of lands in other States, or of a land grant in another State, or of other property that adds to the riches of the corporation, but does not affect the North Dakota part of the road is no sufficient ground for the increase of the tax—whatever it may be—whether a tax on property, or, as here, an excise upon doing business in the State. *St. Louis Southwestern R. Co. v. Arkansas,* 235 U.S. 350, 364, 59 L. ed. 265, 272, 35 Sup. Ct. Rep. 99. In this case, it is alleged, the Tax Commissioner's valuation included items of the kind described to very large amounts. The foregoing considerations justify the preliminary injunction that was granted against what would appear to be an unwarranted interference with interstate commerce, and a taking of property without due process of law. *Fargo v. Hart,* 193 U. S. 490, 48 L. ed. 761, 24 Sup. Ct. Rep. 498, *Union Tank Line Co. v. Wright,* 249 U. S. 275, 282, 63 L. ed. 602, 607, 39 Sup. Ct. Rep. 276.

"The Attorney General of the State, in his very candid argument, suggested that if the mode adopted

by the tax commissioner were open to objections, the statute might be construed to give him an election as to the method of distribution, and that he should take gross earnings, or, if more easily ascertainable, the property or mileage basis of distribution. As we are dealing only with a preliminary injunction, we confine our consideration to a general view of the mode actually followed, and upon that we are of the opinion that the decree should be affirmed."

There was a distinct declaration from the Court that value outside the State cannot be imported into the State for the purpose of taxation, as this bears directly on interstate commerce. The facts in the *Hines* case and the facts in the case at bar and the statute attempting to levy the tax are in all respects the same. The method adopted in each case was the same, and under this case alone the Court should continue the injunction to the hearing.

Following this case came the case of *Royster Guano Company v. Virginia,* 253, U. S. 412, decided June 7, 1920, in which the Supreme Court declared unconstitutional the statute of the State of Virginia imposing an income tax of 1 per cent upon the aggregate amount of the income of each person or corporation within the State, with specific deductions and exemptions, but including in income, "all profits from earnings of any partnership or business done in or out of Virginia and also all such gains and profits derived from any source whatever."

Just previous to this case, and on March 1, 1920, the Supreme Court decided the case of *Shaffer v. Carter,* 252 U. S. 37. The question before the Court arose upon the construction of a statute of Oklahoma taxing the income from property owned of every business, trade or profession, carried on in the State by persons residing elsewhere. The opinion was written by Mr. Justice Pitney. Complainant

contended that under the due process clause the State was without jurisdiction to levy a tax upon income of a nonresident and that the law was invalid because imposed upon all of his property, real and personal without regard to the relation to the production of his income.

In upholding the case as being a tax upon property within the State of Oklahoma, the Court says:

> "Oklahoma has assumed no power to tax nonresidents with respect to income derived from property or business *beyond the borders of the State.* The first section of the act while imposing a tax upon inhabitants with respect to their entire net income arising from all sources, confines the tax upon nonresidents to their net income from property owned and business, etc,. carried on within the State."

The Court made it clear that as the tax was assessed upon property within the State the statute was valid.

This brings us then to the case of *Underwood Typewriter Company v. Chamberlain* decided November 25, 1920, 254 U. S. 113; 65 L. Ed. 165. This opinion was by Mr. Justice Brandeis, and is rather unsatisfactory, to say the least. The tax in question was one fixed by the Legislature of Connecticut in establishing a comprehensive assessment of taxation applicable alike to all foreign and domestic corporations carrying on business within the State. It divided the various business corporations into different classes and taxed them by different methods, but the tax was specifically a tax upon net income *earned from business carried on within the State.*

Under this statute a corporation was required to state in its returns to the Tax Commissioner from what general sources its profits were derived. If the net profits were derived principally from ownership, sale, rental of real property, or from the sale or use of tangible property, the tax is

imposed to such proportion of the whole net income as the fair cash value of the real and tangible personal property within the State bears to the fair value of all the real and tangible property of the company. If the net profits of the company were derived principally from intangible property, the tax is imposed upon such proportion of the whole net income as the gross receipts within the State bear to the total gross receipts of the company. The plaintiff was engaged in manufacturing typewriters and selling its products and accessories which it purchased and in repairing and renting machines. Its main office was in New York but all of its manufacturing was done in Connecticut. It had branches in other States. All articles made by it and some which it purchased were stored in Connecticut until shipped direct to the branch offices.

The Court held that the statute was valid and that it did not violate the 14th Amendment and in support of this referred to the case of *Shaffer v. Carter* just cited.

The statute in this case and the statute in North Carolina are two different propositions. The Connecticut statute specifically provides that the general sources of the profits were to be looked into before the tax was levied. The profits derived were mainly derived in Connecticut. The proportion of its real and personal property within the State was 47 per cent of its whole.

The Supreme Court has just decided the case of *Davis, Director General, v. Wallace,* January 9, 1922. It had before it the construction of an act of North Dakota levying a special excise tax of fifty cents for each $1,000.00 of capital actually invested in the transaction of business within the State provided that in case of corporations engaged in business partly within the State and partly without the State the investments within the State

should be held to mean that proportion of its entire stock and bond issue which its business within the State bears to its total business within the State as not otherwise more easily and certainly separable from such entire business within and without the State, the business within the State shall be held to mean such proportion of the entire business within the State as the property of such corporation within the State bears to its entire property employed in such business both within and without the State; provided that in the case of railroads, etc., having lines that enter into and extend out of or across said State, the property within the State shall be held to mean that proportion of the entire property of such corporation engaged in such business which its mileage within the State bears to the entire mileage within and without the State. The Court through Mr. Justice Van Deventer held this statute to be unconstitutional. The Court says:

> "The taxing officers at first assessed the tax for the year 1918 against these companies by using in its computation the mileage ratio prescribed in the second proviso of the statute; but this Court held that the tax so assessed was an unwarranted interference with interstate commerce and a taking of property without due process of law. *Wallace v. Hines,* 253 U. S. 66. Thereupon the taxing officers assessed the tax for that year, and also for 1919, by using in its computation the ratio specified in the last preceding clause of the statutes—that is to say, a ratio fixed by *contrasting the value of the company's railroad within the State with the value of its entire railroad within and without the State.*"

The Court further says:

> "In the District Court the validity of the tax assessed on the new or substituted basis was challenged on the grounds (a) that as to railroad companies

whose lines lie partly within and partly without the State the statute does not authorize or sanction a tax assessed on that basis; (b) that the statute imposes the tax only as a special excise on doing business in the State, and these companies were not thus engaged during the years for which the tax was assessed—their railroads being then under Federal control and operated exclusively by the Director General; and (c) that an excise tax assessed against these companies on the new or substituted basis operates necessarily to burden interstate commerce and to take property without due process of law, and so is in conflict with the commerce clause of the Constitution and the due process clause of the Fourteenth Amendment."

He says further:

"The first of the objections made to the tax is that it was assessed on a basis which the statute does not authorize or sanction. Of course, if this be so the tax must fall, and the other objections need not be considered. The statute does not prescribe a single or unvarying basis whereon the tax shall be assessed, but designates several bases and defines the particular situation in which each shall be applied. Where the business of the corporation is wholly within the State the tax is to be computed according to the 'capital actually invested' in the business. Where the business is partly within and partly without the State the computation is to be based on a proportion of the company's 'entire stock and bond issues,' which is to be taken as representing the 'investment within the State.' But the proportion is to be determined by standards which vary materially. In one situation it is to conform to the ratio of the company's business within the State to its total business, and in another to the ratio of the company's property employed in its business within the State to its entire property employed in its business wherever conducted. In the instance of railroad companies and other public

utility corporations having lines partly within and partly without the State the statute specifically provides that it shall conform to the ratio of the company's mileage within the State to its entire mileage. This special provision is embodied in a proviso or excepting clause which comes immediately after the clause relating to other corporations, and reads as follows:

> '_____provided, that in the case of a railroad, telephone, telegraph, car or freight line, express company or other common carrier, or a gas, light, power or heating company, having lines that enter into, extend out of or across the State, property within the State shall be held to mean that proportion of the entire property of such corporation engaged in such business which its mileage within the State bears to its entire mileage within and without the State.'

"This provision shows that the Legislature intended by it to put the corporations which it describes in a separate class for the purposes of the tax, to require as to them that the tax be computed and assessed on the special basis there prescribed, and to exempt them from the bases applicable to other corporations. That intention hardly could have been more clearly expressed.

"True, this provision was held in *Wallace v. Hines, supra,* to be in conflict with constitutional limitations and indefensible as respects the railroad companies now before us; but that does not make the provision any the less a key to the intention of the Legislature, or enable the taxing officers to subject these corporations to other provisions from which the act as a whole shows the Legislature intended to except them.

"Where an excepting provision in a statute is found unconstitutional, courts very generally hold that this does not work an enlargement of the scope or operation of other provisions with which that provision

was enacted and which it was intended to qualify or restrain. The reasoning on which the decisions proceed is illustrated in *State ex rel. v. Dombaugh*, 20 Ohio St. 167, 174. In dealing with a contention that a statute containing an unconstitutional proviso should be construed as if the remainder stood alone, the court there said: 'this would be to mutilate the section and garble its meaning. The legislative intention must not be confounded with the power to carry that intention into effect. To refuse to give force and vitality to a provision of law is one thing, and to refuse to read it is a very different thing. It is by a mere figure of speech that we say an unconstitutional provision of a statute is 'stricken out.' For all the purposes of construction it is to be regarded as part of the act. The meaning of the Legislature must be gathered from all they have said, as well as from that which is ineffectual for want of power as from that which is authorized by law.'

"Here the excepting provision was in the statute when it was enacted, and there can be no doubt that the Legislature intended that the meaning of the other provisions should be taken as restricted accordingly. Only with that restricted meaning did they receive the Legislative sanction which was essential to make them part of the statute law of the State; and no other authority is competent to give them a larger application. Had they been enacted without the excepting provision and had it been embodied in a subsequent amendatory act a different situation would be presented—one in which that provision would have no bearing on the meaning or scope of the others—because an existing statute cannot be recalled or restricted by anything short of a constitutional enactment. This was recognized in *Truax v. Corrigan* (December 19, 1921), where, when an amendatory exception proved unconstitutional, we held that the original statute stood wholly unaffected by it.

"From what has been said it follows that to sus-

tain the tax in question we should have to hold that the taxing officers, on finding that it could not constitutionally be assessed on the basis specially prescribed in the statute, were at liberty to assess it on another and different basis which the statute shows was not to be applied to corporations of the class to which these railroad companies belong. Of course, we cannot so hold."

The last case upon the subject is that of *Gillespie v. the State of Oklahoma,* decided by the Supreme Court of the United States, January 30, 1922. In this case Chapter 164 of the Oklahoma laws of 1915 makes every person in the State liable to a tax upon his entire net income arising from all sources such as is exempted from taxing by some law of the United States or of the State. The suit was brought to enforce the collection from the plaintiff upon net income derived by him as lessee from leases of restricted Indian lands, the leases being of the kind dealt with in the case of *Choctaw, Oklahoma & Gulf Railroad Company,* 235 United States 292. The facts set forth that the lessee was an instrumentality used by the United States in carrying out duties to the Indians that it had assumed, and that the only question in the case was whether the plaintiff in error was liable to this kind of tax.

The Supreme Court says:

"In *Choctaw, Oklahoma & Gulf R. R. Co. v. Harrison,* 235 U. S. 292, it was held that such a lessee could not be taxed on the gross sales of coals from Choctaw and Chickasaw mines, when the tax was in addition to taxes collected upon an *ad valorem* basis. In *Indian Territory Illuminating Oil Co. v. Oklahoma,* 240 U. S. 522, it was held that a similar lessee could not be taxed upon the value of an Osage oil lease. Subsequently the principle was applied *per*

curiam to gross production taxes under a later statute of 1916, without reference to the fact that the taxes, instead of being in addition to, were in lieu of all taxes upon property rights. *Howard v. Gypsy Oil Co.*, 247 U. S. 503. *Large Oil Co. v. Howard*, 248 U. S. 549.

"The argument for the State is based primarily upon the cases sustaining taxes upon net income that include gains from interstate commerce, *Shaffer v. Carter*, 252 U. S. 37, 57; *United States Glue Co. v. Oak Creek*, 247 U. S. 231; when 'all expenses are paid and losses adjusted, and after the recipient of the income is free to use it as he chooses.' *William E. Peck & Co., Inc., v. Lowe*, 247 U. S. 165, 175. It is said also that tangible property within the State is subject to taxation and that therefore the defendant's share of oil and gas can not escape. If the cases that we have mentioned as decided *per curiam* tend to oppose the State's position, on the ground that if the property is exempt the income from it also is exempt, it is urged that so far as appears the distinction between the Statute of 1916 then before the Court and the statutes dealt with by the authorities cited in those cases were overlooked.

"We cannot assume that there was the oversight supposed. The decision in 240 U. S. 522, that such leases were not taxable went on general principles not on the nature of the particular statute, and in *Shaffer v. Carter*, 252 U. S. 37, 48, a case that adverted to the distinction relied upon, pp. 57, 58, the decisions *per curiam* were referred to as decided upon the merits. Those decisions appear to us to have been correct. The criterion of interference by the States with interstate commerce is one of degree. It is well understood that a certain amount of reaction upon and interference with such commerce cannot be avoided if States are to exist and make laws. *New York, New Haven & Hartford R. R. Co. v. New York*, 165 U. S. 628. *Diamond Glue Co. v. United States Glue Co.*, 187 U. S. 611, 616. The rule as to instrumentalities

of the United States on the other hand is absolute in form and at least stricter in substance. *Williams v. Talladega,* 226 U. S. 404, 416, 417, 419. *Johnson v. Maryland,* 254 U. S. 51, 55. 'A tax upon the leases is a tax upon the power to make them, and could be used to destroy the power to make them.' 240 U. S. 530. The step from this to the invalidity of the tax upon income from the leases is not long.

"In cases where the principal is absolutely immune from interference an inquiry is allowed into the sources from which net income is derived and if a part of it comes from such a source the tax is *pro tanto* void; *Pollock v. Farmers' Loan & Trust Company,* 157 U. S. 429, 158 U. S. 601; a rule lately illustrated by *Evans v. Gore,* 253 U. S. 245; and applied in a case somewhat like the present by the Supreme Court of Hawaii. *Oahu Ry. & Land Co. v. Pratt,* 4 Hawaii, 126. Whether this property could be taxed in any other form or not, it cannot be reached as profits or income from leases such as those before us. The same considerations that invalidate a tax upon the leases invalidate a tax upon the profits of the leases, and, stopping short of theoretical possibilities, a tax upon such profits is a direct hamper upon the effort of the United States to make the best terms that it can for its wards. *Weston v. Charleston,* 2 Pet. 449, 468."

Tested then, by these decisions of the Supreme Court of the United States, this tax is void because, in the very words of the Act, it purports to levy a tax for the privilege of engaging, not in intrastate business, but in inter- and intrastate business. The basis of the assessment upon which the tax is levied includes the receipts derived from interstate commerce and, not only that, but includes property outside of the State, which does not add to the value of the road and the rights exercised within the State.

It does not come within the rule laid down by the Supreme Court in the *Galveston, Oklahoma* and *Looney* cases, because it attempts to levy a tax on gross revenue

which is in addition to the tax collected and levied upon an *ad valorem* basis upon the property and assets of the corporation.

The defendants relied greatly on the case of *Maine v. Grand Trunk Railroad* but the Supreme Court in the *Galveston* case distinctly says, in construing the *Galveston* case, *that*—

> "The language shows that the local tax was not expected to include the additional value gained by the property being part of a going concern."

Wherever, in the decisions above quoted, a tax similar to this tax has been upheld, it was upheld because it was in lieu of all other taxes and therefore an exercise, in good faith, of the taxing power, and not an unconstitutional burden upon interstate commerce. In this case, however, an *ad valorem* tax upon the same assessment has been levied, and by the State assessing officers distributed to all of the counties, towns and special tax districts, and paid as an *ad valorem* tax, and it would be an anomaly to say that this franchise tax upon the same valuation was not in addition to the *ad valorem* tax already assessed and paid.

(c) The tax is upon property outside the State of North Carolina.

Evidence which is uncontradicted shows that this complainant has large terminals and other property outside of the State of North Carolina, which property was included in the assessment made by the Commissioners. It also shows that the cost of building and maintaining the main line of this Company in the States of Virginia and Alabama is much greater than the cost of its lines in North Carolina (see affidavit of P. R. Albright, Record page 106. affidavits.) It shows that approximately three-fourths of the total operating revenue allocated to North

Carolina are derived from interstate business and that 54 per cent of all freight traffic handled in North Carolina consists of interstate traffic, commonly known as transstate traffic, which has neither origin nor destination within the State, and which is composed of such high class revenue producing commodities as fruits, vegetables, strawberries, and other perishable products, which are handled in special equipment, such as refrigerator and ventilator cars, which cars are moved in fast freight service, and that the cost of handling such perishable traffic, considering initial and terminal services incident thereto, is largely in excess of the average cost of handling business on the Atlantic Coast Line; and that in crediting North Carolina with the straight mile pro rata of the revenue on such traffic without deductions for assembling, terminal, or handling charges in connection therewith, and in charging to North Carolina, equally, a ratio of operating expenses applicable to the business on the entire line, results in allocating to North Carolina a net revenue in excess of that which is actualy earned within said State.

The affidavit also shows that the operating results allocated to North Carolina and reported by this complainant to the North Carolina Tax Commission, do not include any amounts representing proportions creditable or chargeable to North Carolina for the following items of income:

Equipment rents,
Uncollectible Railway Revenue,
Joint Facility rents,
United States Government Taxes.

Therefore, to this extent, the reports to the Commission overstate or understate the net operating income in North Carolina. The evidence further shows that there are no

additional charges made to operating expenses assigned to the State of North Carolina, for instance, for transporting coal consumed by the complainant in that State, although such coal is obtained in Alabama, Tennessee, and the Virginia coal fields. This complainant uses no coal mined in North Carolina. (See affidavit of H. C. Prince, Record, p. 100.)

That these facts show an importation of value can not be disputed.

That the complainant owns vast terminals and other property outside of the State, much more valuable in proportion than any terminals in the State of North Carolina, is clearly seen from the affidavits. These facts bring the case clearly within the recent decision of the Supreme Court of the United States in *Wallace v. Hines, supra,* in which the Court said, in declaring the assessment in that case illegal:

> "North Dakota is a State of plains, very different from the other States, and the cost of the roads there was much less than it was in mountainous regions that the roads had to traverse. The State is mainly agricultural. Its markets are outside its boundaries, and most of the distributing centers from which it purchases are also outside. It naturally follows that the great and very valuable terminals of the roads are in other States. So, looking only to the physical track, the injustice of assuming the value to be evenly distributed according to main line mileage, is plain."

Further the Court says:

> "Therefore, no property of such an interstate road situated elsewhere, can be taken into account unless it can be seen in some plain and fairly intelligible way that it adds to the value of the road and the rights exercised in the State. Hence the possession of bonds secured by mortgage of lands in other

States, or of a land grant in another State, or other property that adds to the riches of the corporation, *but does not affect the North Dakota part of the road,* is no sufficient ground for the increase of the tax—whatever it may be, whether a tax on property or, as here, an excise tax upon doing business in the State."

The same rule of law is laid down in *Fargo v. Hart,* 193 U. S. 490, and in *Coulter v. Weir,* 127 Federal 897.

Upon the argument at bar the defendants contended that they used the reports which were required by the Tax Commission to be filed by the railroad companies, showing earnings and other matters, and that in making the assessment they used these reports as one of the bases upon which to determine the valuation and assessment.

These reports were not filed with the Tax Commission for the purpose of taxation but were filed for other purposes by an order of the Tax Commission, and defendants lose sight of this fact and of the further fact that the reports were made up in the form required by the Tax Commission for purposes other than taxation.

Therefore, the use of these reports and the use of the reports which the Tax Commission ordered the railroad companies to file with them, which were copies of the reports filed by the railroads with the Interstate Commerce Commission in its investigation in *Ex parte* 74, which was a proceeding before the Interstate Commerce Commission for the increase of freight and passenger rates and fares throughout the United States, was unjustified and was a radical departure from the mode of assessment laid down by the statute to be followed by the Tax Commission in making the valuation.

The Board was notified that these reports were not correct for taxation purposes. (See affidavits of Mr. Murray

Hubbard and Mr. W. L. Stanley in *Southern Railway* case filed on behalf of all railroads.)

In the first place the Interstate Commerce Commission did not base its decision in the increase of rates in *Ex parte* 74 upon the reports made by the railroad. That will be found from the decision of the Interstate Commerce Commission in *Ex parte* 74 which, of course, this Court will examine.

In the second place, the railroad companies were not notified that the Tax Commission would use these reports for that purpose and were not given a hearing upon that question in order to produce proof to uphold the railroad companies' contention.

In the case of *L. & N. Railroad vs. Bosworth, et al.*, 209 Federal, 380, at page 445, the Court says:

> "I am clear, also, that the board did not have the right to use plaintiff's report to the Railroad Commission without its being notified thereof, and given an opportunity to be heard in regard to the matters therein relied on as affecting the assessment. It was from items in that report, in connection with items in plaintiff's report to its stockholders, that the board was enabled to determine the gross receipts proportion and the net income proportion which it averaged with the mileage proportion, thereby obtaining the percentage which it used in apportioning a part of plaintiff's capital stock to this State. Without those items it would have been unable to make such apportionment and would have been limited to the mileage proportion. By means thereof it was enabled to raise the apportionment 10 per cent, and thereby add possibly as much as $25,000,000 to plaintiff's assessment. This it did without an opportunity on plaintiff's part to say one word in regard to it.
>
> "An authority in support of plaintiff's position that it was entitled to know of the contemplated use of

this report and to an opportunity to be heard in regard thereto is the case of *Interstate Commerce Commission v. L. & N. R. R. Co.*, 227 U. S. 88, 33 Sup. Ct. 185, 57 L. Ed. 431, Mr. Justice Lamar there said: * * * * * *

" 'The commission is an administrative body and, even where it acts in a *quasi* judicial capacity, is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits between private parties. * * * But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are awarded or defended. In such cases the commissioners cannot act on their own information as could jurors in primitive days. All parties must be fully apprized of the evidence submitted or to be considered, and must be given an opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense.'

"The fact that it was plaintiff's own report which was used does not make a difference. Whilst plaintiff can hardly be heard to say that its own statement is not true, it can be heard to say in what sense it intended the statement to be taken as true. It was not made for assessment purposes or to enable anyone to form a judgment as to the gross receipts or net income proportions of the plaintiff. According to the affidavit of plaintiff's comptroller, the items therein relied on were made for comparative purposes only, i. e., to compare one year with another, and otherwise they were arbitrary in character. A consideration of all he says in regard thereto suggests the possibility at least that plaintiff has been done an injustice in the use which the board made of those items. The plaintiff had the right to make the explanation to the board, and it is not to be presumed that it would not have given it whatever weight it is entitled to."

But we do not have to go further than a decision in the Federal Court of the Eastern District of North Carolina, *ex parte Lam Pui,* 217 Federal, 456, to show the use of such documents is not evidence and any findings upon such reports by an administrative body is illegal.

That was an application for a writ of *habeas corpus* by a Chinaman who had been ordered deported by order of the Secretary of Labor. One of the points raised by the petitioner was:

> "That the Secretary of Labor was without authority or jurisdiction to issue said warrant or direct the deportation of petitioner, for that no evidence or proof to sustain the charge made in the original warrant, or the finding in the order of deportation, had been submitted to the said Secretary, and without such proof the said proceeding and warrant were void and of no legal effect."

The Court says, page 462:

> "While a statute conferring power to summarily hear and determine rights of person or property, and make final orders affecting such rights, will be so construed as to effectuate the purpose of the legislative department of the government, in respect to its administration, those methods of procedure which experience has demonstrated to be necessary for the protection of such rights against oppressive and arbitrary conduct will be enforced. The Courts will not weaken the efficiency of the legislation, or the power conferred upon the administrative officers; but they will not sacrifice substantial and essential rights to summary procedure. This principle is especially applicable when human liberty is involved. While the petitioner is not entitled to demand the constitutional guaranties accorded to our citizens of birth and adoption, he is entitled, by virtue of the certificate issued and passed upon by the lawful authorities, under the supreme law of the land—the treaty be-

tween this republic and China—to demand that he be accorded a fair hearing, as near as may be in accordance with elementary rules of procedure obtaining in all nations having organized government, securing the liberty of its own citizens and those of other nations within its borders by invitation or permission."

In that case this Chinaman was ordered deported, not upon evidence, but upon the statement of the Inspector in charge and this Inspector was not sworn. Upon the statement of the Inspector the Secretary of Labor made an order that he was satisfied that the alien had violated the act so the real question was, whether there was proof in the case and whether, if so, it was legal proof. The judge decided it was not.

On page 463, he says:

"In *Hanges v. Whitfield* (DC) 209 Fed. 675, upon the return of a writ of *habeas corpus,* petitioner being in custody under a warrant directing his deportation, Reed, District Judge, said:

" 'The Court will not in proceedings of this character, consider the testimony or the weight thereof, if properly and fairly taken, to determine whether or not it is sufficient to warrant the deportation of an alien. That would be for the proper immigration officials to determine. But the Court may, and it is its duty to, consider the manner of procuring the testimony, its competency and legal admissibility against the petitioners, and determine whether or not they have had a fair and impartial hearing or trial.' "

And further on page 465:

"Long, and frequently sad, experience teaches that when officers intrusted with the administration of laws affecting the liberty of men are permitted to set aside and disregard those safeguards which the wisdom of the ages have set up for the protection of liberty, in respect to those of one race or color,

one creed or clime, it is but a short, and easily taken, step to do so when the liberty of the citizen is involved. If necessity, or the public safety, demands that swift, unusual, and summary methods of procedure be permitted, the power should be conferred by the people's representatives in Congress in clear and unmistakable terms, and not by rules of departments conferring such power upon inspectors."

The same line of reasoning is shown in the decision of *ex parte Lam Fuk Tak,* 217 Federal, 468.

Interstate Commerce Commission vs. L. & N. Railroad, 227 U. S. 88.

In the latter case, the Supreme Court passed upon the legality of an order of the Interstate Commerce Commission reducing rates of the L. & N. Railroad.

In the Court below the railroad company, exhibited all the evidence that had been introduced before the Commission in addition to other evidence introduced in the Circuit Court, as a basis for the contention that this evidence produced before the Commission utterly failed to show that the rates attacked were unreasonable.

The Court, before whom the case was pending, sustained the view of the Railroad and held the order void, because there was no material evidence to support it.

The Supreme Court in its opinion says:

"But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. And if the governments' contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depended upon facts, the Commission could

disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.

"In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, *quasi* judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence.' (*Tang Tun v. Edsell,* 223 U. S. 681, 56 L. ed. 610, 32 Sup. Ct. Rep. 359; *Chin Yow v. United States,* 208 U. S. 13, 52 L. ed. 370; 28 Sup. Ct. Rep. 201; *Low Way Suey v. Backus,* 225 U.S. 468, 56 L. ed. 1167, 32 Sup. Ct. Rep. 734; *Zakonaite v. Wolf,* 226 U. S. 272, *ante,* 218, 33 Sup. Ct. Rep. 31), or if the facts found do not, as a matter of law, support the order made, (*United States v. Baltimore & O. S. W. R. Co.,* 226 U. S. 14, *ante,* 104, 33, Sup. Ct. Rep. 5, Cf. *Atlantic Coast Line R. Co. v. North Carolina Corporation Commission,* 206 U. S. 20, 51 L. ed. 942, 27 Sup. Ct. Rep. 585, *Wisconsin M. & P. R. Co. v. Jacobson,* 179 U. S. 301, 45 L. ed. 201, 21 Sup. Ct. Rep. 115; *Washington ex rel. *Oregon R. & Nav. Co. v. Fairchild,* 224 U. S. 510, 56 L. ed. 863, 32 Sup. Ct. Rep. 535, *Interstate Commerce Commission v. Illinois Central R. Co.,* 215 U. S. 470, 54 L. ed. 287, 30 Sup. Ct. Rep. 155, *Southern P. Co. v. Interstate Commerce Commission,* 219 U. S. 433, 55 L. ed. 283, 31 Sup. Ct. Rep. 288; *Muser v. Magone,* 155 U. S. 247, 39 L. ed. 137, 15 Sup. Ct. Rep. 77)."

Under the authority of these cases, therefore, and the admissions in the answers that the Commission had used these reports, it is clearly shown that the assessment included value outside of North Carolina, was not made in

accordance with the mode prescribed by the statute of North Carolina, and was made upon the reports filed for different purposes which could not be used by the Commission as a basis of valuation.

PART FIVE

THE AMENDMENT OF THE FRANCHISE TAX LAW PASSED AT THE SPECIAL SESSION OF 1921 DOES NOT VALIDATE THE TAXES ASSESSED IN THIS CASE, NOR DOES THE AMENDMENT CHANGE THE EFFECT OF THE STATUTE.

It will be contended by counsel for defendants that new Section 78, as amended by the special session of 1921, had the effect to validate the taxes levied here.

The Consolidated Statutes of North Carolina, 1919, Section 3950, provides:

> "3950. *Construction of amended statute.* Where a part of a statute is amended it is not to be considered as having been repealed and re-enacted in the amended form; but the portions which are not altered are to be considered as having been the law since their enactment, and the new provisions as having enacted at the time of the amendment."

The franchise act was enacted at the January session of 1921, which ended in March, 1921. The amendment, which was Section 78, was enacted at the December, special session of 1921. In the meantime the franchise tax, provided for under Section 82 (6½) of the January session of 1921, had already been assessed by the Commissioner of Revenue and certified down, and under that act the taxes became a lien upon the railroad company's property. This, of course, was prior to the special session in December, 1921. The taxes were due in October, and certainly no law passed in December could have the effect to change the legality or illegality of these taxes. For

convenience the statutes are here set forth in parallel columns:

Section 82 (6½)	New Section 78
"* * * The State Tax Commission shall ascrtain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated."	"* * * the Commissioner of Revenue shall ascertain and certify to the State Auditor the value upon which the amount of tax to be paid by any such railroad as a license or privilege tax shall be calculated."
"* * * the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each railroad company in the State assessed for the year in which such report is made for *ad valorem* taxes."	"* * * The measure of extent to which every such railroad company is carrying on intrastate commerce within the State of North Carolina shall be the value of the total property, tangible and intangible, in this State of which such railroad company is assessed for *ad valorem* taxation for the year in which such report is made."
"The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be," etc.	"The tax which every railroad company shall pay for the privilege of carrying on intrastate commerce within this State shall be," etc.
	"Provided, that it is the intention of this section to levy upon railroads a license or privilege tax for the privilege of engaging in intrastate commerce carried on wholly within the State of North Carolina and not a part of interstate or foreign commerce; that the tax provided for in this section is not intended to be a tax on the privilege of engaging in interstate commerce, nor is it intended to be a tax on the business of interstate commerce, nor is it intended to be a tax having any relation to the interstate or foreign business or commerce in which any such railroad company may be engaged in addition to its business in this State."

It will be seen that Section 82 (6½), quoted above, says

"franchise or privilege tax" while Section 78 calls it "license or privilege tax." Section 82 (6½) provides that the extent to which a railroad company should exercise its "franchise" should be the value, tangible and intangible, etc., for *ad valorem,* while Section 78 of the new law provides that the "measure of the extent to which every railroad company is carrying on intrastate commerce within the State shall be of such value." Section 82 (6½) provides that "the franchise of each such railroad for the privilege of *exercising its franchise in this State,* shall be," etc. Section 78 sets out that it is the intention to levy upon the railroads a license or privilege tax on the privilege of engaging in intrastate commerce carried on wholly within the State, and not as a part of the interstate or foreign commerce, and the tax is not intended to be a tax for the privilege of engaging in interstate commerce, nor on the business of interstate commerce, nor to have any relation to foreign or interstate business or commerce in which such railroad may be engaged in *addition to its business in the State.*

The only effect that the new statute can have is to show that the Legislature recognized the fact that the tax levied at the January session of 1921 was in truth and in fact a tax upon interstate commerce and, therefore, void, and has attempted by this method to remedy the defect. If it does remedy the defect, which we deny, it can not remedy the defect as to taxes which had already been imposed, as under Section 3950 of the Consolidated Statutes of North Carolina, 1919, just quoted, new provisions are only effective from the time of the amendment, otherwise they would be in contravention not only of the statute, but of the Constitution.

In *Cooley on Taxation, Third Edition,* at page 494, the author says:

" 'New burdens,' it is very justly said, 'ought always to be prospective,' and it is reasonable to suppose the Legislature has intended that they should be. Such a supposition is in harmony with the general rule of law which requires that the Courts 'always construe statutes as prospective and not retrospective, unless constrained to the contrary course by the rigor of the phraseology.' This rule applies also to constitutional provisions; and it obtains not only as a construction of the grant of power, but also as to all the incidents; though a remedial provision may well be presumed to have been intended to reach back for the purposes of justice."

The Courts will not give to a law retrospective powers even when they might do so without violation of the Constitution, unless the intent of the Legislature is clearly expressed in favor of such retrospective powers, except in the case of remedial statutes, and those which relate to statutes in the Courts it is the general rule that acts of the Legislature will be so construed as to make them operate retrospectively unless the Legislature has explicitly declared its intention that they should so operate, unless such intention appears by necessary implication from the nature and words of the act so clearly as to leave no room for a reasonable doubt on the subject.

Black on Interpretation of Law, page 250.

Presumptively, tax laws are to have a prospective operation only, and remedies they provide for collection will not be applied to taxes previously laid, unless an intent that they shall be is clearly manifested. Provisions in a statute which make radical changes in the rights of parties shall be treated as prospective.

1 *Desty on Taxation,* 104.

In *Waddill v. Masten,* 172 *North Carolina* 582, 90 *Southeastern* 694, Mr. Justice Hoke, writing the opinion of the Court, says:

"The general rule is fully recognized with us that a statute will be given prospective effect only, unless the law in question clearly forbids such a construction. *Mann v. Allen,* 171 N. C. 219, 88 S. E. 235. A retrospective law, however, within the meaning of the principle, is one that, in some way, affects the rights and liabilities of parties incident to and growing out of a transaction that has passed."

In *State v. Haynie,* 169 *North Carolina* 277, 84 *Southeastern* 385, 387, Mr. Justice Walker, writing the opinion of the Court, says:

"We have held distinctly that a statute will not be construed as retrospective in its operation unless it was clearly intended so to be, and especially where such a construction would take away rights under a former law, though they may be of a kind which the Legislature could divest by proper action if so minded."

In *Mann v. Allen,* 171 *North Carolina* 219, 88 Southeastern 235, the Court was construing the effect of a school district tax. The opinion is by Mr. Justice Hoke, who says:

"In reference to the question thus presented, in a proceeding of this character, legislative in its nature and involving chiefly the repeal of a tax, it is very generally held that, as to taxes already levied, the same will be given a prospective effect only unless the law controlling the matter clearly forbids such a construction."

Further he says, page 236:

"* * * when used in reference to taxation, it more generally refers to the imposition of a tax by the Legislature, or under proper legislative sanction, or to the apportionment of such a tax to the individual taxpayer and placing the same on the official lists preparatory to their collection, and in some instances is said to be the equivalent of 'assessment.'"

This case, therefore, holds the two principles for which we are contending; *First,* that the Act of the Special Session of December, 1921, must be construed prospectively, and, *Second,* that the taxes had already been levied, and, therefore, the amendment cannot have any retroactive effect.

In *Corporation of Elizabeth City v. Commissioners of Pasquotank County,* 146 North Carolina 539, 60 Southeastern 416, which is one of the leading cases in North Carolina, the Court, through Mr. Justice Walker, says:

> "It is an elementary rule of construction that a statute will not be declared to be retroactive, unless it was clearly intended so to be, and especially where such a construction would take away rights acquired under a former law, even though the Legislature would have the constitutional power thus to divest them. *State v. Littlefield,* 93 N. C. 614. It is a sound, general principle, that no statute takes effect as of a time prior to its ratification, nor has effect by any fiction or relation before it was actually passed, unless it is so declared in the statute, either expressly or by clear implication."

This being the rule of construction which the Supreme Court of North Carolina declares must be followed in construing statutes of North Carolina, this Court is, therefore, bound by these rules.

PART SIX.

THE DISCRIMINATION IS SYSTEMATIC AND INTENTIONAL.

I.

The Undervaluation of Property Other Than Railroad Property Was Intentional and Systematic.

The so-called Revaluation Act, Chapter 84, Public Laws 1919, was passed by the General Assembly of North Carolina at its session in 1919, and ratified on the 11th day of March, 1919. The Act, Section 2, recognizes that there had been a systematic undervaluation of property throughout the State, for it provides:

> "That for the purpose of making a complete list of all of the property of every citizen of the State, real, personal and mixed, *and of having all of such property valued in accordance with the rule laid down in the Constitution of the State at its true value in money,* and to be adopted and used as a basis of all taxes levied by the State, counties, cities, towns and other taxing districts of the State for the year one thousand nine hundred and twenty, the machinery hereinafter set out is provided."

In Section 5 it provided:

> "In considering the increased cost of material and labor these factors shall be considered upon the basis of such increase as may be deemed to be normal, or stable, and not such temporary increase as obtained during, or immediately on account of, war conditions, and in estimating the real value of land, it shall be with reference to the normal or stable value and not with reference to the temporarily inflated

values, but in all cases the appraiser shall determine what is the actual fair market value of the property."

It provided that the valuation of the property should be made as of May 1, 1919. See Sections 12 and 31. In Section 32, however, it provided that all corporations except railroad, telegraph, telephone, and street railway companies should be assessed annually as of the first day of January. In Section 31, however, it provided that as of the first day of May, 1919, the State Tax Commission should make a complete revaluation of the property of all railroad, telegraph, telephone and street railway companies, to be used as a basis for computing taxes for such companies for the years 1920, 1921, 1922 and 1923, such revaluation to be made in accordance with the general rule and intent and purpose of the act as to all other property.

Nevertheless, and recognizing the fact that property generally in the State was undervalued, and although demanding that it be valued as of May 1, 1919, the Legislature provided in Section 1 that the valuation of the real property for 1919 should be the same as it was for the year before.

The State Tax Commission proceeded to revalue property, and the following facts and figures are shown from the figures taken from the complaints, from the State's answer, and from the report of the State Tax Commission, which is in evidence in this case. The Tax Commission reported in 1920 that the value of all real property in North Carolina *on May 1st,* 1919, was $2,006,124,-999.97, yet this same property was assessed for taxation in May, 1919, at $506,808,394.00, *and this assessment was ratified and approved by the Legislature* in the first section of the Revaluation Act. This shows a ratio of assessed

value to true value of 25.2%. At the same time the property of this complainant was assessed at its full value, and even the State Tax Commission admitted that it was assessed at least 85% of its value. (Record, p. 77.)

At the same time, that is in 1919, the *true value* of the real estate in the thirty counties throughout which this railroad was operating, was $707,216,601.00; (see report of State Tax Commission) whereas the property was *actually assessed* at $164,960,110.00, or a ratio of 23.3 per cent.

The Legislature at its Extra Session in 1920 approved the assessment and valuation made under the Revaluation Act and adopted it as a basis for the levy of tax rates by the State, except as such valuations might thereafter be changed according to law.

The Legislature at its next session, which was begun in January, 1921, immediately proceeded to abolish the rule laid down by it in the Revaluation Act, *to assess property at its true value*, by passing an act permitting the assessing boards to *horizontally reduce* real estate values, and the assessing bodies proceeded to take advantage of the authority given them by the Legislature to violate the Constitution, and decreased by percentages the value of property which cost hundreds of thousands of dollars to work up.

In order to ascertain the percentage of assessed value to true value throughout the State of North Carolina, the complainant and the other railroads reviewed the entire State, examined every conveyance of real estate in ninety-eight out of the one hundred counties of North Carolina, the exceptions being Dare and Green, being small counties, and took a record of every conveyance of one thousand dollars or over that was made from the first day of January, 1921, to the thirtieth day of June, 1921. This

showed that the total assessed value of all of the real estate conveyed during this six months was $20,373,684.07, whereas the consideration and purchase price was $30,598,-475.24, or a ratio of assessed to true value of 66.58 per cent for the entire State. This information is compiled in the affidavit of C. J. O'Brien filed herein. (Record, pp. 114-118.)

The defendants attack this method of showing a systematic undervaluation and cite the case of *Coulter v. L. & N. Railroad,* 196 U. S. 599, and particularly refer to the following quotation in that case.

> "It is obvious that the accidental sales in a given year may be a misleading guide to average values, apart from the testimony that some, at least, of the conveyances did not report true prices, yet they furnish the chief weapon of attack. The testimony as to the Board of Equalization taking 80% of the reported sales was explained by members of the board. It would be going very far to assume that they were committing perjury because, to another mind, the sales seemed more significant and the explanations not very good."

The fallacy of the defendants' contention is seen from an examination of the *Coulter* case, both in the Supreme Court and in the lower Court, 131 Federal, 282. The Supreme Court says, in referring to the statements of sales in different counties:

> "On the other hand there was testimony that the statement of sales did not afford satisfactory evidence of average values, or at least, for various reasons were not regarded by the Board of Equalization as affording it."

An examination of the opinion in the Federal Reporter, at page 294, will readily show the difference between the evidence offered in the instant case and the affidavits in

in that case. Here we have taken every conveyance for a period of six months over one thousand dollars in consideration, and have gotten not the fictitious value, as numbers were in that case, but the actual value as shown by the documentary Government stamps which it is mandatory to place upon transfers on the basis of fifty cents for each five hundred dollars of consideration. Here we have true consideration, there they had many items of fictitious consideration, commissioner's sales, natural love and affection, etc. Here these were not included except at the actual value. Here we have seven or eight thousand conveyances and there only a few hundred. The difference is patent. Here we did not take exceptional sales, but took every single conveyance and examined it and reported the true facts.

The State Tax Commission itself in its report to the Governor used this same method in some instances in ascertaining the value of property.

The evidence which we have produced, the Act of the Legislature itself in declaring in 1919 that the property is not assessed at its true value, and in the same breath approving an assessment for 1919, which it has just declared is not in accordance with the Constitution, and in immediately authorizing a horizontal reduction within six months thereafter, can show nothing to our minds except an intentional and systematic undervaluation of real property, and the argument goes further when it is shown and admitted that no consideration whatsoever was shown to railroad companies in this undervaluation by the Commissioner of Revenue, no reduction or allowance was given to them, and on top of this the Legislature, realizing the fact that revenues would be decreased, superimposed upon the railroads, in addition to the other taxes, an income tax of 3 per cent. The ratio of assessed to true valuation, which we have shown, is admitted. It is admitted in the answers because the ratio is

found by the figures furnished by the State through its answer and report to the Commission.

II.

The Methods Adopted for the Valuation of the Southern, Norfolk Southern, Atlantic Coast Line and Seaboard Air Line Were Not the Same; Did Not Follow the Statute and Are, Therefore, Illegal.

It is admitted that the Southern Railway was assessed on a basis of capitalization of its earnings at 6 per cent. (Record, p. 122) and it is contended by the Southern Railway that the wrong figure was used in capitalizing the earnings. It is admitted by the State that in assessing the Norfolk-Southern Railway it did not use any method whatsoever fixed by the statute, but took the valuation fixed by the Interstate Commerce Commission, which was the physical valuation. (Record, p. 122.) It is practically admitted, and it is a fact, that in assessing the Atlantic Coast Line Railroad Company, the Commission used its investment account and did not make any deductions for outside terminals and other property, not the basis of assessment, to which it added an absolutely arbitrary figure for intangible value. The table heretofore used in this brief gives the basis of calculation upon every known method of assessment. A glance at this table will show that the intangible property was not based upon the method established by the statute, to-wit, the captialization of earnings plan, or the stocks and bonds plan, but upon an arbitrary method pursued by the Commission.

The Commission's report itself shows that it took the investment account, to which it added an intangible value, mark you, not based upon the method prescribed by the

statute, but a different method. The Commission (Record, p. 79) says:

> "Pending this final valuation (that is, the Interstate Commerce Commission's valuation), the railroad lines have submitted to the Interstate Commerce Commission what is known as their investment accounts and have asked that this basis of value be used for determining the scale of rates and amounts of return they are entitled to earn on their properties. *It seems clear to us that the time has come when the value upon which railroad or public utility is permitted to earn a return is the value upon which it shall pay taxes to this State.* In either case the purpose is to find the fair value of the property. *So that generally our valuation of railroad lines in this State is based upon a mileage proportion of their investment account, which they have asked the Interstate Commerce Commission to adopt for making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines, BASED UPON THE VALUE OF BUSINESS IN THIS STATE GREATER THAN THE AVERAGE VALUE OF TRAFFIC ON OTHER LINES AS A WHOLE."* (Italics ours.)

This statement, which is a public document, approved by the Legislature, shows upon its face that the Commission has deliberately set aside the method provided by the Legislature and adopted a different mode of value for railroads. Notwithstanding the solemn report which it made to the Legislature that it took the investment accounts of all railroads and added to this an arbitrary intangible value, in the affidavits filed in this case the defendants stated in the case of the Southern Railway, its assessment was based on an earning value capitalized at 6 per cent. The defendants show that a different method was used in valuing the Southern Railway, the Norfolk-Southern Railway and the Atlantic Coast Line Railroad. The Southern was valued on an earn-

ing basis capitalized at 6 per cent, (Rec. p. 121, 122). In the case of the Norfolk Southern the Commission used the valuation for rate-making purposes tentatively fixed by the Interstate Commerce Commission, based upon reproduction, less depreciation. But in the case of the Atlantic Coast Line Railroad, this complainant, it took its investment account as shown by a report made by this complainant to the Interstate Commerce Commission in the investigation in *Ex parte* 74, which of course, as this Court knows was an investigation made by the Commission of its own motion, into the question of the reasonableness of the rates of freight pending throughout the United States in 1920. These facts show a clear and consistent intention to violate the law of North Carolina in the mode and manner of assessment, and violate the uniformity clause of its constitution, because no one road has been assessed upon the same basis.

This is such a discrimination as the Court found to be the case in *Raymond vs. Chicago Traction Co.*, 207, U. S. 20. In that case Mr. Justice Peckham says, page 36:

> "The case before us is one which the facts make exceptional. It is made entirely clear that the board of equalization did not equalize the assessments in the cases of these corporations, the effect of which was that they were levied upon a different principle or followed a different method from that adopted in the case of other like corporations whose property the board had assessed for the same year. It was not the mere action of individuals, but, under the facts herein detailed, it was the action of the State through the board. There is here no contention of illegality simply because of assessing the franchises of these corporations at a different rate from tangible property in the State, which the State might do, *Coulter v. Railroad,* 196 U. S. 559, but it is asserted that the board assessed the franchises and other property of these companies at a different rate and by a different method from that which had been employed by the board for

other corporations of the same class for that year. The result is an enormous disparity and discrimination between the various assessments upon the corporations. The most important function of the board, that of equalizing assessments, in order to carry out the provisions of the constitution of the State in levying a tax by valuation, 'so that every person shall pay a tax in proportion to the value of his, her, or its property,' was, in this instance, omitted and ignored, while the board was making an assessment which it had jurisdiction to make under the laws of the State. This action resulted in an illegal discrimination, which, under these facts, was the action of the State through the board."

The Tax Commission in its report to the Governor, which was approved by the Legislature says:

"The new assessment of railroads does not represent as great an increase as the average increase of other property *for the reason that they were assessed relatively higher than other property before,* but we anticipate that it will meet the fair demand of public opinion when it is known that they are assessed like other property at their full value, *and upon a valuation quite as high as that upon which they are asking to be permitted to earn a return.*" (Record p. 79.)

This is a clear admission by the defendants that railroad property is valued higher than other property and has been consistently discriminated against. It is a further admission that it is based upon what the Commission says is the value upon which railroads desire to enter returns for rate-making purpose. As previously stated, the Interstate Commerce Commission did not accept the Railroad Company's report.

We, therefore, say that there has been a discrimination against railroads in this case, which was systematic and intentional, but even if the Court finds that it was not sys-

tematic and intentional, we say there has been an assessment based upon an illegal method adopted by the Commission in violation of the statute.

PART SEVEN.

THE ENTIRE SCHEME OF TAXATION IS ILLEGAL.

1. Because in Violation of the Uniformity Clause of the Constitution of North Carolina.

2. Because in Violation of the Commerce Clause of the Constitution of the United States.

I.

It Violates the Uniformity Clause of the North Carolina Constitution.

The Constitution of North Carolina provides, Section 3 of Article 5, and Section 9 of Article 7, that the State, county, town and township taxes *shall be* uniform and *ad valorem* upon all property in the same except property exempt by this Constitution. We say that it *shall be ad valorem* because Section 3 says:

> "Laws *shall be* passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; *and also all real and personal property according to its true value in money.*"

When the Legislature of North Carolina undertakes, in violation of the express terms of the Constitution, to set up a taxing system prohibited by the Constitution, it necessarily is illegal.

The plain mandate of the Constitution provides that uniform *ad valorem* taxes *shall* be levied on real and personal property for State, county, city and township taxes.

The Legislature has seen fit to violate the express provisions of the Constitution of North Carolina and levied

no tax whatsoever on moneys, credits, investments in bonds, stocks, joint stock companies, or real and personal property for State purposes. It has, in violation of this provision of the Constitution, delegated to the counties and cities the right to levy taxes for these purposes, and in order to make up the deficit for the State treasury, created by this system of taxation, it proposes, for State purposes, to levy an income tax and a privilege or franchise tax upon corporations of every class and character. It would appear from the revenue bill that the members of the Legislature vied with each other in ascertaining every class, kind, character and designation of taxes that it could impose upon corporations in North Carolina, so as to prevent taxing the property in North Carolina which Section 3 of Article 5 provides should be taxed.

We have already referred the Court to the *Redmond* case, and quoted from that case to show that these provisions of the Constitution are mandatory. This scheme of taxation is predicated upon the desire to take from the earnings of corporations, and especially of public service corporations in North Carolina, a greater amount in taxation in proportion to their property values than other citizens of the State. The farmer is exempt from paying any tax upon his farm for the operating expenses of the State government. True he, with others, is taxed on his income, but after he has deducted his exemptions, as allowed by the statute, it is plain to be seen that the farmer will pay little or no income tax to the State of North Carolina. No scheme of taxation not authorized by the Constitution of the State can exist.

As said by Justice Shepherd in the *Redmond* case, after referring to various cases:

> "These cases decide that, when the taxing power is exercised for a public purpose, *the Constitution, and*

not the Legislature, declares what property shall be taxed, *and by a uniform rule, and ad valorem.*" (Italics ours.)

In that case there was a question of the taxation of personal property. He then further says:

> *"All taxes, therefore, must be levied as well on personal as on real property."* (Italics ours.)

There was no power or authority in the Legislature to put into effect a scheme of taxation in violation of the mandate of the Constitution. It may be argued that this complainant is not injured because the tax levied against it is only one-tenth of one per cent upon the *ad valorem* value. That is beside the question. The fact remains that this is the only *ad valorem* tax that is levied for State purposes, and, tacked on to this, as against railroads, is a tax upon its gross receipts, when the Constitution of North Carolina, in plain terms, provides that no tax on income shall be levied except the tax on *net* income, and we have already shown that that particular clause of the Constitution must be construed to mean gross income *less all expenses.*

II.

It Violates the Commerce Clause of the Constitution of the United States.

This Court in the Galveston case says:

> "When a Legislature is trying simply to value property, it is less likely to attempt or to effect injurious regulation than when it is aiming directly at the receipts from interstate commerce. *A practical line can be drawn by taking the whole scheme of taxation into account.* This must be done by this Court as best it can. *Neither the State Courts nor the Legislatures, by giving a tax a particular name,*

or by the use of some form of words, can take away our duty to consider its nature and effect." (Italics ours.)

The entire scheme of taxation established by the Legislature of North Carolina must be fully understood in order that it may be determined whether as a whole it is legal.

This scheme is as follows:

(1) There is an *ad valorem* tax levied upon the entire property of the Railroad Company as a going concern at full value fixed by the Commissioner of Revenue upon a valuation of its real and personal property, tangible and intangible, as hereinbefore outlined.

(2) There is then levied upon this same property upon the same valuation an additional tax of one-tenth of one per cent, called a franchise or privilege tax.

(3) There is then superimposed upon these two taxes another tax denominated a "net income tax," which is, when applied to railroad companies, a tax upon its gross income derived from interstate commerce, with two deductions. The statute levying this tax is known as "The Income Tax Act of 1921."

Section 100 of the Act provides:

> "This Act shall be known and may be cited as the Income Tax Act of 1921."

In Section 101 it is said that the general purpose of the Act is to impose a tax for the use of the State Government upon the *net income*, in excess of the exemption set out. In this section is also found the following language:

> "The tax imposed upon the net income of corporations in this schedule is in the nature of a franchise tax for the privilege granted by the State to

domestic corporations and to foreign corporations in this State, and is in addition to the tax imposed by schedule 'C' of this Act."

Schedule "C" of the Act imposes the franchise tax hereinbefore referred to.

By amendment at the Extra Session, 1921, Public laws, p. 129, this section was changed to read:

"The tax imposed upon the net income of corporations under this schedule is in addition to the tax imposed under schedule 'C' of this Act."

By this amendment the Legislature attempted by changing the name of the tax to change the character of it.

Section 202 provides:

"The basis of ascertaining the net income of every corporation engaged in the business of operating a steam or electric railroad, express service, telephone or telegraph business, or other form of public service, when such company is required to keep records according to the standard classification of accounting of the Interstate Commerce Commission, shall be the 'net operating income' of such corporations as shown by their records kept in accordance with that standard classification of accounts, when their business is wholly within this State, and when their business is in part within and in part without the State, their net income within this State shall be ascertained by taking their gross 'operating revenues' within this State, including in their gross 'operating revenues' within this State, the equal mileage proportion within this State of their interstate business and deducting from their gross 'operating revenues' the proportionate average of 'operating expenses' or 'operating ratio' for their whole business, as shown by the Interstate Commerce Commission standard classification of accounts. From the net operating income thus ascertained, shall be deducted 'uncol-

lectible revenue' and taxes paid in this State for the income year, other than income taxes and war profits and excess profits taxes, and the balance shall be deemed to be their net income taxable under this act."

This income tax it will thus be seen is a tax practically upon the gross income of the complainant, which income is derived partly from interstate commerce and partly from intrastate commerce, three-fourths of which in North Carolina, as shown by the record herein, being derived from interstate commerce. (See affidavit of H. C. Prince, Rec., p. 101.)

It attempts to tax such part of the operating revenue of the complainant which it derives from interstate commerce as is represented by the proportion of the mileage of railroad in North Carolina to the total mileage of railroad of the complainant's entire system which extends into many States. The amount of the income tax, therefore, is largely dependent upon the amount of interstate commerce done by the complainant in other States, as well as North Carolina, which, of course, is a direct burden upon interstate commerce. When this entire scheme is taken into consideration, it is plain to be seen that it is vicious. The so-called franchise or privilege tax and the income tax are not made a part of the general scheme of valuation, nor a part of the *ad valorem* tax, but are imposed in addition to the *ad valorem* assessment.

This scheme of taxation is similar to the scheme declared invalid by the Supreme Court in *Galveston, Harrisburg, etc., v. Texas,* 210 U. S. 217.

It is a scheme to reach the gross receipts of the railroad company in addition to taxing the property of the railroad company in North Carolina upon a full valuation of that property taken as a going concern.

The Court in *Choctaw, Oklahoma & Gulf v. Harrison,* 235 U. S., 292, said:

> "This very language imposes a gross revenue tax which shall be in addition to the taxes levied and collected upon an *ad valorem* basis. We cannot, therefore, conclude that the gross receipts were intended merely to represent the measure of value of property liable to a general assessment. Provision is made to determine that under a different basis."

In *Crew Levick v. Pennsylvania,* 245 U. S. 294, the Court says that it is in duty bound to determine the questions raised under the Federal Constitution upon its own judgment *of the actual operation and effect of any tax, irrespective of the form it bears or how it is characterized by the State court.* This statute, however, has not yet been passed upon by the Supreme Court of North Carolina, although the Income Tax Law is now being contested.

In the *Galveston* case, *supra,* the Court says:

> "We are of the opinion that the statute levying this tax does amount to an attempt to regulate commerce among the States. The distinction between a tax 'equal to' one per cent of gross receipts, and a tax of one per cent of the same, seems to us nothing except where the former phrase is the index of an actual attempt to reach the property and to let the interstate traffic and the receipts from it alone. We find no such attempt or anything to qualify the plain inference from the statute, taken by itself. *On the contrary, we rather infer from the judgment of the State Court and from the argument on behalf of the State, that another tax on the property of the railroad is upon a valuation of that property taken as a going concern. This is merely an effort to reach the gross receipts, not even disguised by the name of an*

occupation tax and in no way helped by the words 'Equal to.'" (Italics ours.)

It seems to us, therefore, that this whole scheme of taxation must be taken into account in considering the legality of it, and, as it bears directly upon interstate commerce, and taxes the receipts derived therefrom and property used in interstate commerce, and property outside of the State of North Carolina, not used in interstate commerce in said State, it should be condemned and the assessment set aside.

PART EIGHT.

CONSTRUCTION OF TAX STATUTES.

In *Gould v. Gould,* 245 United States 154, Mr. Justice McReynolds, delivering the opinion of the Court, says:

> "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen. *United States v. Wigglesworth,* 2 *Story,* 369, Fed. Cas. No. 16,690; *American Net & Twine Co. v. Worthington,* 141 U. S. 468, 474, 35 L. ed. 821, 824, 12 Sup. Ct. Rep. 55; *Benziger v. United States,* 192 U. S. 38, 55, 48 L. ed. 331, 338, 24 Sup. Ct. Rep. 189."

In *Forty-Two Broadway Company v. Anderson,* 209 Federal 991, in construing the income tax, the Court says:

> "The general rule in reference to statutes imposing taxes is that they are to be construed strictly against the government, and in case of any doubt as to their meaning they are to be given a liberal construction in favor of those subjected to taxation."

In *Southern Railway Company v. North Carolina Corporation Commission,* 97 Federal 513, a case from the Eastern District of North Carolina, decided November 4th, 1899, Circuit Judge Simonton says:

> "We are construing statutes imposing taxes and burdens on the taxpayer. In such the rule is changed. 'The highest power that a soverign—the lawmaking power—can confer is the power to tax, and every act conferring that power must express it plainly, and the act so expressing it must be strictly constructed.' *Suth.* St. Const. 459 *et seq.* In every case of doubt

such a statute is construed against the government, *U. S. v. Wigglesworth, 2 Story,* 369, Fed Cas. No. 16,690."

Judge Simonton then goes on to quote Lord Chancellor Cairns in *Partington v. Attorney General,* L. R. 4 H. L., 100, 102; which quotation is as follows:

> "As I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, the crown, seeking to recover the tax, cannot bring the subject within the leter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an 'equitable construction,' certainly such a construction is not admissible in a taxing statute when you can simply adhere to the words of the statute."

In *United States v. Wigglesworth, supra,* Mr. Justice Story, in holding that the Revenue Act of 1841 did not levy a duty on indigo, says:

> "My reasons for this conclusion are these: In the first place, it is, as I conceive, a general rule in the interpretation of all statutes levying taxes or duties upon subjects or citizens, not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out, although standing upon a close analogy. In every case, therefore, of doubt, such statutes are construed most strongly against the government and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes clearly and expressly import. Revenue statutes are in no just sense remedial laws, or laws founded upon any permanent public policy, and there-

fore are not to be liberally construed. Hence, in the present case, if it be a matter of real doubt whether the intention of the act of 1841 was to levy a permanent duty on indigo, that duty will absolve the importer from paying the duty beyond the period when it would otherwise be free."

Cooley on Taxation, Third Edition, page 452.

In *Dwarris on Statutes,* pages 742, 749, the author says:

"It is a well-settled rule of law that every charge upon the subject must be imposed by clear and unambiguous language. Acts of parliament which impose a duty upon the public will be critically construed with reference to the particular language in which they are expressed. When there is any ambiguity found, the construction must be in favor of the public, because it is a general rule that when the public are to be charged with a burden, the intention of the legislature to impose that burden must be explicitly and distinctly shown."

This language has been cited with approval by the Supreme Court of North Carolina in the case of *State v. Greene,* 35 Southeastern 462, the opinion being by Chief Justice Clark.

Tested, therefore, by these decisions the assessment is illegal and the taxes imposed are void.

PART NINE.

THE INJUNCTION SHOULD BE CONTINUED TO THE HEARING.

It appears from the affidavit of Charles J. Joseph (Record, p. 130), that the taxes paid by complainant to the various counties, cities and towns, in this State, for the year 1920, amounted to $353,663.84, of which $307,-789.53 was paid to the counties, and $45,874.31 to the various cities and towns. It further appears, however, from this affidavit that this complainant *has already paid for the year 1921,* the sum of $446,654.61, of which $393,-998.45 was paid to the counties, and $52,656.16 was paid to the cities and towns, being total of $92,990.77 which it has paid in taxes for the year 1921 already on the valuation of $34,645,345, which was agreed to at the time of the stipulation entered herein, *in excess* of the amount which it paid for taxes in the year 1920, *on the valuation of $50,867,800,* and if complainant is made to pay on the same valuation of $50,867,800, for 1921, it will have to pay the sum of $625,067.65, which is an increase of $271,-403.81, for the year 1921 over the year 1920, and if the assessment is to stand for the next three years it would amount to an increase of $820,211.43.

In *Harriman, et. al., v. Northern Securities Company, et. al.,* 132 Federal 464, 475, the Court says:

> "The case not being ripe for a final decision, the present application is for a preliminary injunction. The granting or refusal of a preliminary injunction, whether mandatory or preventive, calls for the exercise of a sound judicial discretion in view of all the circumstances of the particular case. Regard should be had to the nature of the controversy, the object for which the injunction is sought, and the comparative hardship or convenience to the respective parties in-

volved in the awarding or denial of the injunction. The legitimate object of a preliminary injunction, preventive in its nature, is the preservation of the property or rights in controversy until the decision of the case on a full and final hearing upon the merits, or the dismissal of the bill for want of jurisdiction or other sufficient cause. The injunction is merely provisional. It does not, in a legal sense, finally conclude the rights of the parties, whatever may be its practical operation under exceptional circumstances. In a doubtful case, where the granting of the injunction would, on the assumption that the defendant ultimately will prevail, cause greater detriment to him than would, on the contrary assumption be suffered by the complainant, through its refusal, the injunction usually should be denied. But where, in a doubtful case, the denial of the injunction would, on the assumption that the complainant ultimately will prevail, result in greater detriment to him than would on the contrary assumption be sustained by the defendant through its allowance, the injunction usually should be granted. The balance of convenience or hardship ordinarily is a factor of controlling importance in cases of substantial doubt, existing at the time of granting or refusing the preliminary injunction. Such doubt may relate either to the facts or to the law of the case, or to both. It may equally attach to, or widely vary in degree as between the showing of the complainant and that of the defendant, without necessarily being determinative of the propriety of allowing or denying the injunction. Where, for instance, the effect of the injunction would be disastrous to an established and legitimate business through its destruction or interruption in whole or in part, strong and convincing proof of right on the part of the complainant and of the urgency of his case is necessary to justify an exercise of the injunctive power. *Where, however, the object for which an injunction is sought, is the preservation of a fund in controversy or the maintenance of the status quo, until*

the question of right between the parties, can be decided on final hearing, the injunction properly may be allowed, although there may be serious doubt of the ultimate success of the complainant. (Italics ours.) Its allowance in the latter case is a provisional measure, of suspensive effect and in aid of such relief, if any, as may finally be decreed to the complainant. These views are supported by abundant authority to which, were it not for the importance of the case, I should refrain from adverting. In *Russell v. Farley,* 105 U. S. 433, 438, 26 L. Ed. 1060, the Court through Mr. Justice Bradley said:

> "It is a settled rule of the Court of Chancery, in acting on applications for injunctions, to regard the comparative injury which would be sustained by the defendant, if an injunction were granted, and by the complainant, if it were refused. Kerr on Injunctions, 209, 210. And if the legal right is doubtful, either in point of law or of fact, the Court is always reluctant to take a course which may result in material injury to either party.'

"In *City of Newton v. Levis,* 79 Federal, 715, 25 C. C. A. 161, the Circuit Court of Appeals for the Eighth Circuit through Judge Sanborn, said:

> 'The granting or withholding of a preliminary injunction rests in the sound judicial discretion of the Court, and the only question presented by this appeal is whether or not the Court below erred in the exercise of that discretion, under the established legal principles which should have guided it. The propriety of its action must be considered from the standpoint of that Court. * * * The controlling reason for the existence of the right to issue a preliminary injunction is that the Court may thereby prevent such a change of the conditions and relations of persons and property during the litigation as may result in irremediable injury to some of the parties before their

claims can be investigated and adjudicated. When the questions to be ultimately decided are serious and doubtful, the legal discretion of the judge in granting the writ should be influenced largely by the consideration that the injury to the moving party will be certain, great and irreparable if the motion is denied, while the inconvenience and loss to the opposing party will be inconsiderable, and may well be indemnified by a proper bond if the injunction is granted. A preliminary injunction maintaining the *status quo* may properly issue whenever the questions of law or fact to be ultimately determined in a suit are grave and difficult, and injury to the moving party will be immediate, certain, and great if it is denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if it is granted. * * * The arguments and brief of counsel invite us to a consideration of the questions of law which must be finally determined upon a demurrer to the bill, or upon a final hearing of this case after answer. We have, however, found it unnecessary to decide these questions on this appeal, and we express no opinion upon them. They are of sufficient importance and difficulty to demand careful examination and deliberate consideration,' etc.

"In *Glascott v. Lang, 3 Myl. & C.* 451, 455, Lord Chancellor Cottenham said:

'In looking through the pleadings and the evidence, for the purpose of an injunction, it is not necessary that the Court should find a case which would entitle the plaintiff to relief at all events. It is quite sufficient if the Court finds, upon the pleadings, and upon the evidence, a case which makes the transaction a proper subject of investigation in a court of equity.'

"In *Hadden v. Dooley,* 74 Federal 420, 431, 20

C. C. A. 494, the circuit court of appeals for the second circuit through Judge Shipman said:

'When the questions which naturally arise upon the transactions make them a proper subject for deliberate examination, if a stay of proceedings will not result in too great injury to the defendants, it is proper "to preserve the existing state of things until the rights of the parties can be fairly and fully investigated and determined" by evidence and proofs which have the merit of accuracy.'

"In *Great Western R. Co. v. Birmingham*, etc., R. Co., 2 *Phil.* Ch. 597, Lord Chancellor Cottenham said:—

'It is certain that the Court will in many cases interfere and preserve property in *status quo* during the pendency of a suit in which the rights to it are to be decided, and that without expressing, and often without having the means of forming, an opinion as to such rights. It is true that no purchaser *pendente lite* would gain a title: but it would embarrass the original purchaser in his suit against the vendor which the Court prevents by its injunction. * * * It is true that the Court will not so interfere if it thinks that there is no real question between the parties; but seeing that there is a substantial question to be decided, it will preserve the property until such question can be regularly disposed of. In order to support an injunction for such purpose, it is not necessary for the Court to decide upon the merits in favor of the plaintiff. If, then, this bill states a substantial question between the parties, the title to the injunction may be good, although the title to the relief prayed may ultimately fail. Is, then, the case stated by the bill so clear in favor of the defendants, and so inadequate to support the relief prayed by the bill, as to justify the Court in permitting it to be disposed of, and new titles or in-

terests to be introduced, before any decision can be obtained upon the case so made?'

"In *Shrewsbury v Chester R. Co. v. Shrewsbury R. Co.,* 1 Sim N. S. *410, *426, *427, *432, the Vice Chancellor, Lord Cranworth, said:—

'When the Court is called on to interfere to preserve property *pendente lite,* there are, I apprehend, two points on which the Court must satisfy itself. First, it must satisfy itself, not that the plaintiff has, certainly a right, but that he has a fair question to raise as to the existence of such right. * * * Where it is made out that there is a point to be decided which the plaintiff is fairly raising, still there is a further question, namely, whether interim interference, on a balance of convenience and inconvenience to the one party and to the other, is or is not expedient. Where the alternative is interference of probable destruction of the property, there, of course, the Court will be very ready to lend its immediate assistance, even at considerable risk that it may be encroaching on what may eventually turn out to be a legal right of the defendant. But, where, on the other hand, the only evil to result from non-interference is, that the plaintiff may, by the contracts or deeds of the defendant, be retarded or embarrassed in his litigation, there the Court will be far more ready to listen to any suggestion of the defendant showing that interference during litigation will prejudice his rights.

* * *Although I am perfectly satisfied of the authority of this Court to issue an injunction, not merely to restrain parties from doing acts, but also from entering into contracts pending litigation that may embarrass the plaintiff in his suit, and that the Court is entitled to do so whenever it sees there is a fair ground for litigation raised by the plaintiff, yet that right of the Court must be guided by a discretion not to exercise it where

it sees that on the balance of convenience and inconvenience between interim interference and non-interim interference the balance greatly preponderates in favor of the defendant and against the plaintiff.'

"In the above case a preliminary injunction was refused on the ground of the 'enormous preponderence of inconvenience in granting the injunction over any possible inconvenience in refusing it. The doctrine of the foregoing cases is contained in many others from which there is no occasion to quote. *Denver & R. G. R. Co. v. United States,* 124 Fed. 156, 59 C. C. A. 579; *Allison v. Corson,* 88 Fed. 581, 32 C. C. A. 12; *Buskirk v. King,* 72 Fed. 22, 18 C. C. A. 418; *Sanitary Reduction Works v. California Reduction Co.* (C. C. A.) 94 Fed. 693; *Southern Pacific Co. v. Earl,* 82 Fed. 690, 27 C. C. A. 185; *New Memphis Gas & Light Co. v. Memphis* (C. C.) 72 Fed. 952; *Indianapolis Gas Co. v. Indianapolis* (C. C.) 82 Fed. 245; *Georgia v. Brailsford,* 2 Dall. 402, 1. L. ed. 433.

"It does not appear, nor has it been claimed or intimated, that the granting of the preliminary injunction asked for would interfere with the operation of the Northern Pacific Railway Company and the Great Northern Railway Company, or either of them, or otherwise prove detrimental to the interests of the public. It undoubtedly would, during the continuance in force of the injunction, preclude the stockholders of the Northern Securities Company, or a considerable proportion of them, from directly or indirectly receiving dividends on the stock of either of the railway companies, unless under and by virtue of some voluntary and extrajudicial arrangement. But this Court has power to require the complainants as a condition precedent to the issuing of the injunction, a bond in such form and amount as fully to indemnify all persons who may ultimately be found entitled to such dividends against all loss or damage resulting from the suspension of their payment. On the other

> hand, the denial of a preliminary injunction would, if the complainants should ultimately prevail, render barren their victory so far as relief in this suit is concerned. * * * In view of the character of the questions involved in this case it would be highly inequitable that the complainants should, in advance of any final decision on the merits, be put in such a position as to be precluded, either wholly or in a large measure, from the realization and enjoyment of the fruits which should be theirs through the immediate result of a final decree in the present case, should it ultimately be determined in their favor."

Bearing in mind, therefore, the rule laid down in the *Harriman* case that the legitimate object of a preliminary injunction is the preservation of property or rights in controversy until the decision on full and final hearing upon the merits, and, further, that where the sole object for which the injunction is sought is the preservation of a fund in controversy or maintenance of the *status quo*, until the question between the parties can be determined on final hearing, and in view of the fact that it may be impossible for the complainant to recover back its money paid into the State treasury; it would be highly inequitable that complainant should be put in such a position as in the event that it wins the case, it will be precluded from recovering the fruits of its victory. A denial of the injunction in this case will mean loss of the entire money to the plaintiff that will have to be paid to the State and a multiplicity of suits to recover that which will have to be paid to the counties, towns, and townships. The inconvenience (because there can be no loss) to the defendants would be slight. In fact the figures above show that this railroad company has paid nearly one hundred thousand dollars ($100,000.00) more in taxes already on this valuation of $34,645,345 this year than it did last year on the valuation of $50,867,800. Certainly, in this case the *status*

quo should be preserved until the rights of the parties may be determined.

> *Louisville & Nashville Railroad Company v. Bosworth,* 209 Federal 380.

That case was a tax case from Kentucky. In determining the question of the injunction the Court examined all of the leading cases of the Supreme Court of the United States and of the Federal Court, and, among other things, the Court says, page 384:

> "The plaintiff, therefore, is entitled to the relief it seeks if it does no more than make good the other claim, to-wit, that the board in making the assessment did not follow the statute."
>
> *Coleman v. Howell* (N. C.), 42 Southeastern 554,
> *Purnell v. Page* (N. C.), 45 Southeastern 534,
> *Cobb v. Clegg* (N. C.), 49 Southeastern 80.

In the last case cited, Mr. Justice Walker, writing the opinion, after referring to the distinction between common and special injunctions, says:

> "Not so with a special injunction, which is granted for the prevention of irreparable injury, when the preventive aid of the Court of Equity is the ultimate and only relief sought and is the primary equity involved in the suit. In the case of special injunctions the rule is not to dissolve upon the coming in of the answer, even though it may deny the equity, but to continue the injunction to the hearing, if there is probable cause for supposing that the plaintiff will be able to maintain his primary equity, and there is a reasonable apprehension of irreparable loss unless it remains in force, or if, in the opinion of the Court, it appears reasonably necessary to protect the plaintiff's right until the controversy between him and the defendant can be determined. It is generally proper, when the parties are at issue concerning the equitable or legal right, to grant an interlocutory injunction to preserve the right in *status quo* until the determination of the controversy, and espe-

cially is this the rule when the principal relief sought is in itself an injunction, because a dissolution of a pending interlocutory injunction, or the refusal of one, upon application therefore in the first instance, will virtually decide the case upon its merits, and deprive the plaintiff of all remedy or relief, even though he should be afterwards able to show ever so good a case. The principles we have attempted to state are, we think, well supported by the authorities upon the subject. 1 High on Injunction (3rd Ed.), p. 6; *Jarman v. Sanders*, 64 N. C. 367; *Heilig v. Stokes*, 63 N. C. 612; *Blackwell Durham Tobacco Co. v. McElwee*, 94 N. C. 425; *Purnell v. Daniel*, 43 N. C. 9. *Bispham's Eq.* (6th Ed), p. 405. The cases of *Marshall v. Commissioners*, 89 N. C. 103; *Lowe v. Commissioners*, 70 N. C. 532, and *Capehart v. Mhoon*, 45 N. C. 30, would seem to be directly in point. In the first of these cases the Court says:

> 'The injunctive relief sought in this action is not merely auxiliary to the principal relief demanded, but it is the relief, and a perpetual injunction is demanded. To dissolve the injunction, therefore, would be practically to deny the relief sought and terminate the action. This the Court would never do where it may be that possibly the plaintiff is entitled to the relief demanded. In such cases it will not determine the matter upon the preliminary hearing upon the pleadings and *ex parte* affidavits, but it will preserve the matter intact until the action can be regularly heard upon its merits. Any other course would defeat the end to be attained by the action.'

"Mr. Justice Bynum, for the Court, in the second case cited, says:

> 'The injunctive relief sought in this action is not auxiliary to another and main relief but is the main relief itself and the object of the action, and therefore the dissolution of the injunction would be equivalent to a dismissal of the action. In such cases, where a reasonable doubt exists in the mind of the

Court whether the equity of the complainant is sufficiently negatived by the answer, the Court will not dissolve the injunction, but continue it to the hearing. Much must depend upon the sound discretion of the Court to whom the question of dissolution is referred.'

"While the principle as stated in the last quotation is in itself sufficient to sustain our decision, we think the learned and able justice had in mind the rule of practice in the cases of a common injunction, which was dissolved upon the answer, unless the equity was confessed, or the answer was evasive, or the equity was not sufficiently denied. *Capehart v. Mhoon, supra.* This will appear clearly from the following language of the Court, speaking by Nash, J., in *Troy v. Norment*, 55, N. C. 318:

'In applications for special injunctions (and this is such a one), the bill is read as an affidavit to contradict the answer; and where they are in conflict, and the injury to the plaintiff will be irreparable if the relief be not granted, the injunction will not be dissolved on motion, but will be continued to the hearing to enable the parties to support by proofs their respective allegations. Justice demands this course. When there is nothing before the Court but oath against oath, how can the chancellor's conscience be satisfactorily enlightened?'

"It will also appear by what is said by Pearson, J., for the Court, in *Purnell v. Daniel*, 43, N. C. 9:

'This is not the case of an ordinary or common injunction, in aid of and secondary to another equity; but it is the point in the cause—it is to prevent irreparable injury, as is alleged—and to dissolve the injunction decides the case, for to dissolve it, allows the act to be done. By way of illustration, take the case of an injunction to stay waste in cutting down ornamental or shade trees. If the injunction be dissolved on bill and answer, and the trees are cut down, the damage is done, for the trees can not be made to grow again. To dissolve this injunction before

hearing the cause on proof, the defendant must show that the plaintiff has no case fit to be heard; and if, from the answer, it appears that there is any question of doubt, on a matter that should be further inquired into, the injunction will be continued until the hearing.' "

The Supreme Court of North Carolina in this case has applied the same rule that all of the other Courts have applied. The rule is plain, simple and laid down for the purpose of doing justice between the parties. The same rule was also laid down by Chief Justice Clark in *Hyatt v. De Hart,* 140 N. C. 270; by Mr. Justice Hoke in *Tise v. Whitaker Harvey Company,* 57 Southeastern 210; in *Combs v. Adams,* 63 Southeastern 186; and, again, by Mr. Justice Walker in *Person v. Person,* 70 Southeastern 752.

The eminent counsel for the defendants with much seriousness endeavored to impress upon the Court below that to declare a statute of North Carolina to be unconstitutional, or to enjoin the exercise of the taxing powers, was a matter of most grave concern. The Supreme Court of North Carolina, through Mr. Justice Connor, in *State v. Williams,* 61 Southeastern 61, in holding a statute unconstitutional, says, in quoting from the opinion of Mr. Justice Brewer, in *Stearns v. Minn.* 179 U. S. 241:

> "Whatever the people, framing their organic act, have declared to be the limits of legislative power, and the modes in which that power shall be exercised, must always be recognized by the Courts, state and national, as obligatory."

He further says:—

> "It is the right of the citizen, when called to the bar of the Court, to appeal to the Constitution and demand that the Court declare whether the statute which he is charged with violating be 'the law of the land.' To make this right of any value or protection to the citizen it must be the duty of the Court to declare its judg-

ment thereon. To deny this is to keep the promise to the ear and break it to the hope—to make of none effect the declaration that 'ours is a government of law and not of men.' 'It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence. No higher duty rests upon this Court than to exert its full authority to prevent all violations of the principles of the Constitution.' "

The judges of the Supreme Court of North Carolina have unhesitatingly declared acts of the Legislature void, when in fact they were in violation of the principles of constitutional government, as laid down in the Constitution of North Carolina, and this from the time of *Bayard v. Singleton,* 1 North Carolina, 42, decided in 1787, up to the present time.

As late as 1919, in *Southern Railway Company v. Cherokee County,* 97 Southeastern 758, the history of the declaration by the Supreme Court of North Carolina of laws as invalid whenever in violation of the terms of the Constitution, was set forth by Mr. Justice Allen, in the opinion of the Court, and in the concurring opinion by Mr. Justice Walker, and in that case, which was a tax case, the Court unhesitatingly declared the statute of the Legislature unconstitutional.

Seip v. Wright, 91 Southeastern 359,
Herndon v. Durham & Southern Railroad, 77 Southeastern 683.

We think that sufficient has been said to show the Court that we are entitled by all the rules of equity to have this injunction continued to the hearing.

THOMAS W. DAVIS,
Solicitor for Appellant.

GEO. B. ELLIOTT,
HARRY SKINNER,
H. W. WHEDBEE,
Of Counsel.

Wilmington, N. C.,
September 23, 1922.

APPENDIX

Extracts from Constitution of North Carolina:

Article V.

"**Section 3. Taxation Shall be by Uniform Rule and ad Valorem:** Exemptions.—Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money * * * The General Assembly may also tax trades, professions, franchises and incomes." etc.

"**Section 6. Taxes Levied for Counties.**—The total of the state and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the state for the term required by article nine, section three, of the constitution: Provided, further, the state tax shall not exceed five cents on the one hundred dollars value of property."

Article VII.

"**Section 9.**—All taxes levied by any county, city, town or township shall be uniform and *ad valorem* upon all property in the same except property exempted by this Constitution."

Extracts from Consolidated Statutes of North Carolina:

Section 7979. Remedy of Taxpayer for unauthorized

tax.—Unless a tax or assessment, or some part thereof, be illegal or invalid, or be levied or assessed for an illegal or unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part, nor to restrain the sale of any property for the non-payment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taking of any personalty levied on by the sheriff to enforce payment of such tax or assessment against the owner thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the sheriff; but if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city, or town, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city, or town for the amount so demanded, including in his action against the county both state and county tax; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefore, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer.

EXTRACTS FROM MACHINERY ACT OF NORTH CAROLINA.

Ch. 38, Public Laws 1921

Sec. 28 (*a*). *County boards to review valuation of real estate.*

County board of review.

The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen (any vacancy which may have occurred to be filled by appointment of the board of county commissioners), shall

Day of meeting.

meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of real property as heretofore appraised and assessed in the county as a whole is in excess of the fair value of such property at the time of meeting of such board. The chairman of the

Organization of boards.

board of county commissioners shall be the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be secretary of the said board. The said board

Inquiry and investigations as to values.

shall make proper inquiry and investigation into the existing values of real property as compared with the assessed and appraised values thereof in the several cities, towns, and townships of the county; and

Findings.

if it shall find that the assessed value of such property is in excess of the actual value, it shall find the average percentage of such excess in the county as a whole, or in the several cities, towns, and townships, and shall report its finding so made to the

Report to State Tax Commission

State Tax Commission not later than the twentieth day of April, one thousand nine hundred and twenty-

Valuation.

one. The values so reported shall be the values at which the property shall be assessed for taxation, unless and until the same have been changed and revised by the State Tax Commission and certified to

the board of county commissioners of such county, which shall be done not later than the first day of July, one thousand nine hundred and twenty-one.

Sec. 28 (*b*). *Specific complaints.*

Specific complaints.

The board of county commissioners of the several counties shall have and exercise authority to hear and determine specific complaints of over-valuation or under-valuation of any particular tracts of real property, and after the general equalization order provided for in the preceding subsection has been made, any person who owns property subject to taxation, and who finds that said property stands assessed for taxation, after such equalization order has been made, at an amount in excess of the actual value of such property on the first day of May, one thousand nine hundred and twenty-one, may have the right to have the same reassessed and reappraised by the said board, by filing with the clerk of the board of county commissioners, some time during the month of May, one thousand nine hundred and twenty-one, an application in form and substance as follows:

Application for reassessment.

Time for application.

To the Board of County Commissioners:

Form of Application.

.....County.

I hereby make application for the reassessment of the real property hereinafter described, for the reason that the said property is now assessed in excess of its actual value on the first day of May, one thousand nine hundred and twenty-one, and do hereby certify that in my best judgment the actual value of said property on that date was as it is stated herein to be:

Location .....
Condition .....
Acreage .....
Assessed Value .....
Actual value May 1, 1921.....

.....,
(*Signature of Complainant.*)

Complaint of undervaluation.

Review initiated by board.

Any citizen of the county may file complaint of the under-valuation of any real property in the county, or the board may of its own motion revise the valuation of any property that it finds to be valued at more or less than the actual value of such property on the first day of May, one thousand nine hundred and twenty-one.

Investigation of complaints.

Reports and recommendation.

Action by county commissioners.

The county board of commissioners may appoint the county auditor or any resident freeholder of the county, who has general knowledge of the value of the real property of the county, to investigate any and all complaints filed under the provisions of this section, and make report and recommendations to the said board as to the true value in money of such properties. The county board of commissioners shall thereupon approve or revise such recommendations, and shall, not later than the fifteenth day of July, one thousand nine hundred and twenty-one, make report to the State Tax Commission of the increases and reductions in the valuation of specific properties made under authority of this section.

Report to State Tax Commission.

General revision of values.

Sec. 28 (*c*). If the board of county commissioners of any county, at their regular monthly meeting on the first Monday in April, one thousand nine hundred and twenty-one, shall be of the opinion that the valuation of real estate in such county is so unequal as between the owners of real property in such county as to require a more general revision of assessments than is practicable to be made under the provisions of subsections (*a*) and (*b*) of this section, or the value of real property as heretofore appraised in such county as a whole is in excess of the present actual value of such property, it may by resolution so find and order that such revision be made. In the event such order is made, it shall be in lieu of the remedies provided in subsections (*a*) and (b) of this section, and the board of county commissioners shall appoint a board of review, composed of three resident freeholders, who have general knowledge of the value of real estate in such county, and such board of review may appoint such number

Order in lieu of other remedies.

Board of review.

of assistants as in their judgment is necessary to complete such revision, not later than the first day of July, one thousand nine hundred and twenty-one. The said board shall take and subscribe to an oath to perform their duties according to the provisions of this act according to the best of their ability, and shall give notice by public advertisement that the board, or one of its members or assistants, will attend at least one day in each township, and as long as shall be necessary to hear evidence as to the true value of the real property therein, and of any property over-valued or under-valued; and the said board shall proceed as speedily as possible to hear and determine what the present true value thereof is, and to make such general review and revision of the assessed value of real property in such county as it finds is necessary to be made, to the end that the same may be fairly and equally assessed at its present actual value in money. A complete abstract of such revised assessment, by townships, giving average value per acre, and value of town lots, and the value as a whole, shall be made to the board of county commissioners of such county and to the State Tax Commission, not later than the fifteenth day of July, one thousand nine hundred and twenty-one, and shall be subject to the authority of the State Tax Commission as a State Board of Equalization, so as to preserve a proper equalized value of real property in the several counties. The board of county commissioners shall fix the expense that may be incurred under this section, such expense to be borne by the county.

Assistants to board of review.

Board to be sworn.

Advertisement.

Determination of value.

Abstract to county commissioners.

Authority of State Tax Commission.

Expense of review.

Sec. 28 (*d*). The report of the board of county commissioners, made pursuant to section twenty-eight (*b*), and the abstracts as reported by the board of review, under section twenty-eight (*c*), shall be the basis for the assessment of taxes, unless and until the same are changed by the State Tax Commission on or before the first day of September, one thousand nine hundred and twenty-one, and the said State Tax Commission shall, on or before the first

Basis for assessment of taxes.

State Tax Commission to certify findings.

day of September, one thousand nine hundred and twenty-one, certify down to the board of county commissioners of the several counties its findings and conclusions upon said report and abstracts.

Access to questionnaires and records.

Sec. 28 (*e*). In any proceedings under this act the county board of review or county board of commissioners, or any of their representatives, shall have access to the questionnaries filed by the owners of real property in the county under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen, the tax rolls for the several townships and any other records pertaining thereto.

State Tax Commission to exercise authority of supervision.

It shall be the duty of the State Tax Commission to exercise the authority of supervision herein imposed, to the end that, as nearly as may be, property of all classes in all counties of the State may be fairly and equally valued in accordance with the requirements of the Constitution and the provisions of this act, and if in any case in doubt as to whether changes in valuation in any county should be approved, it shall have the authority, and it shall be its duty, to make or cause to be made such investigation as it may deem necessary to determine the facts and reach a just conclusion.

Investigation.

"Actual value."

The words "actual value," as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold.

Appeal to State Tax Commission.

Sec. 28 (*f*). Any taxpayer in any county may appeal, within thirty days, to the State Tax Commission from any finding by the board of county commissioners.

Application for review by State Tax Commission.

Sec. 28 (*g*). Any taxpayer owning property assessed originally by the State Tax Commission may make application to the State Tax Commission for a review of the assessment of its property in the same manner herein provided for complaint

by property owners before the county boards, and the State Tax Commission may hear and determine such complaints.

Hearing and determination.

Sec. 61. *Railroads.*

The commissioners selected from time to time under authority to establish the North Carolina State Tax Commission shall constitute a board of appraisers and assessors for railroad, canal, and steamboat companies, and other companies exercising the right of eminent domain.

Board of assessment for railroad, canal, steamboat, and other companies.

Sec. 62. *Railroads.*

The president, secretary, superintendent, or other principal accounting officer within this State, of every railroad, telegraph, telephone, street railway company, whether incorporated by the laws of this State or not, shall,, at such date as real estate is required to be assessed for taxation, return to the said commission for assessment and taxation, verified by the oath or affirmation of the officer making the return, all the following described property belonging to such corporation within this State, viz: The number of miles of such railroad lines in each county in this State, and the total number of miles in this State, including the roadbed, right of way, and superstructures thereon, main and sidetrack, depot buildings, and depot grounds, section and tool houses, and the land upon which situated and necessary to their use; water stations and land, coal chutes and land, and real estate and personal property of every character necessary for the construction and successful operation of such railroad, or used in the daily operation, whether situated on the charter right of way of the railroad or on additional land acquired for this purpose, except as provided below, including, also, if desired by the State Tax Commission, pullman or sleeping cars or refrigerator cars owned by them or operated over their lines: *Provided, however,* that all machine and repair shops, general office buildings, storehouses, and contents located outside of the right of

Companies to file returns.

Date of return.

Details of returns.

Proviso: Property listed locally.

way, and also real and personal property other than the property as returned above to the State Tax Commission, shall be listed for purposes of taxation by the principal officers or agents of such companies with the list-takers of the county where the real and personal property may be situated in the manner provided by law for the listing and valuation of real and personal property. A list of such property shall be filed by such company with the State Tax Commission. It shall be the duty of the register of deeds, if requested so to do by the State Tax Commission, to certify and send to the said commission a statement giving a description of the property mentioned in the foregoing proviso, and showing the assessed valuation thereof, which value shall be deducted from the total value of the property of such railroad company as arrived at by the commission, in accordance with section sixty-six, before the apportionment is made to the counties and municipalities. The registers of deeds shall also certify to the commission the local rate of taxation for county purposes as soon as the same shall be determined, and such other information obtained in the performance of the duties of their office as the said commission shall require of them; and the mayor of each city or town shall cause to be sent to the said commission the local rate of taxation for municipal purposes.

List filed with State Tax Commission.

Local assessments certified to State Tax Commission.

Local tax rate.

Other information.

Rate of municipal tax.

Sec. 62a. *Railroad companies required to file maps, etc.*

Every railroad company operating in this State shall also be required to file with the State Tax Commission a map or blueprint showing the location within the corporate limits of every incorporated city or town of its main line of road, and its length, together with location of its right of way, not exceeding one hundred feet in width, and the location and value of all real estate owned by any such company within the limits of any such city or town, and not included in the right of way so designated. Every such company shall also report the value of any and all buildings and structures within the limits of any such city or town,

Railroad companies to file maps showing location and property in towns.

Values reported.

whether on or off its right of way, and the commission shall find the value of all such real estate, buildings, and structures, and shall certify to such city or town the value of same, in addition to the value per mile of so much of its main line as may be located within such city or town, for *ad valorem* taxation.

Tax commission to find values and certify to towns.

Sec. 63. *Railroads.*

Rolling stock.

The movable property belonging to a railroad company shall be denominated for the purpose of taxation "rolling stock." Every person, company, or corporation owning, constructing or operating a railroad in this State shall, in the month of May, annually return a list or schedule to the State Tax Commission, which shall contain a correct detailed inventory of all the rolling stock belonging to such company, and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping cars and dining cars, express cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars, and all other kinds of cars, and the value thereof, and a statement or schedule, as follows: (1) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (2) the amount of capital stock paid up; (3) the market value, or if no market value, then the actual value of shares of stock; (4) the length of line operated in each county and total in the State; (5) the total assessed value of all tangible property in the State; (6) and, if desired, all the information heretofore required to be annually reported by section five thousand two hundred and ninety-one of the Revisal. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the commission, and with reference to amounts and value on the first day of May of the year of which the return is made.

List of rolling stock to be returned.

Details.

Schedule.

Amount of capital and number of shares.

Value of shares.

Length in each county and total for State.

Assessed value of tangible property.

Other information.

Form of schedule.

Date.

Sec. 64. *Tangible and intangible property assessed separately.*

Determination of value of tangible property.

(*a*) At such dates as real estate is required to be assessed for taxation, the said commission shall first determine the value of the tangible property of each division or branch of such railroad of rolling stock and all other physical or tangible property. This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property.

Considerations governing value.

Valuation of franchise.

(*b*) They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property.

Considerations determining value.

Tax value of property.

Apportionment.

(*c*) The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an *ad valorem* taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certify, on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city or town; all taxes due the State from any railroad company shall be paid by the treasurer of each company directly to the State Treasurer within thirty days after the first day of July of each year; and upon failure to pay the State

Value certified to counties and towns.

State taxes paid to State Treasurer.

Treasurer as aforesaid, he shall institute an action to enforce the same in the county of Wake or any other county in which such railroad is located, adding thereto twenty-five per centum of the tax. The board of county commissioners of each county through which said railroad passes shall assess against the same only the tax imposed for county, township, or other taxing district purposes, the same as is levied on other property in such county, township, or special taxing districts.

Action for collection.

Penalty.

Local assessments.

Sec. 65. *Railroads.*

When any railroad has part of its road in this State and part thereof in any other State, the said commission shall ascertain the value of railroad track, rolling stock, and all other property liable to assessment by the State Tax Commissioner of such company as provided in the next preceding section, and divide it in the proportion to the length such main line of road in this State bears to the whole length of such main line of road, and determine the value in this State accordingly: *Provided,* the commission shall, in valuing the fixed property in this State, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State than the average value for the entire system. On or after the first Monday in July the said commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said commission may, if they see fit, require all argument and communications to be presented in writing.

Proportional valuation of interstate railroads.

Proviso: Considerations in valuing tangible property.

Hearing on valuation and assessment.

Commission may require arguments and communications in writing.

EXTRACTS FROM
REVENUE ACT OF NORTH CAROLINA
Ch. 34, Public Laws 1921.

Sec. 3. *State taxes.*

No tax on property for State.

Tax for State expenses. Appropriations.

No tax on any property in the State shall be levied for any of the uses of the State Government. The taxes hereinafter levied in this act are for the expenses of the State Government, the appropriations to its educational, charitable, and penal institutions, pensions for Confederate soldiers and widows, the interest on the debt of the State, an equalizing fund for public schools, and other specific appropriations made by law, and shall be collected and paid into the general fund of the State Treasurer.

SCHEDULE C

Defining taxes embraced in schedule.

Sec. 76. *Defining taxes embraced in this schedule.* The taxes embraced in this schedule shall be listed and paid as specially herein provided, and shall be for the privilege of carrying on the business or doing the act named; and, if a corporation, shall be a tax for the continuance of its corporate rights and privileges given under its charter, if incorporated in this State; or by reason of any act of domestication, if incorporated in another State, and shall be subject to other regulations mentioned in section twenty-six under Schedule B.

Sec. 77. *Privilege tax on chair and sleeping cars.*

Chair and sleeping-car companies to report receipts.

Every company operating chair cars and sleeping cars on which extra fare is charged shall make report to the State Auditor on or before the first day of October for the year one thousand nine

hundred and twenty, and on or before the thirtieth day of July annually thereafter of the gross receipts collected from passengers transported between points in this State for the preceding year ending the thirtieth of June, which shall be verified by the oath of the secretary and treasurer of such company, and the said State Auditor shall certify said amount to the State Treasurer.

Verification.

The annual license tax for operating such chair and sleeping cars within the State shall be three per cent (3%) of the gross earnings for the previous year. The tax imposed by this section shall be paid to the State Treasurer at the time of making the report provided for herein. No county, city or town shall impose any tax under this section.

License tax.

Tax paid to treasurer.

Sec. 78. *Obsolete.*

Sec. 79. *Privilege tax on express companies.*

That every express company doing business in this State shall, on or before the thirtieth day of July in each year, make and return to the Corporation Commission a statement of the total number of miles of railroad lines over which such express company operates in this State; the said Corporation Commission shall certify the same to the State Treasurer as a basis for assessment and collection of the tax levied in the following schedule:

Returns of express companies.

Sec. 79a. *Rate of taxation.*

Each express company doing business in this State shall pay to the State Treasurer an annual privilege or license tax as follows: Any such company which earned from its express transportation business not more than six per cent upon its capital invested the previous calendar year shall pay at the rate of five dollars ($5) per mile. Any such company which so earned as much as seven per cent and less than eight per cent upon its capi-

Rate of tax.

On companies earning not more than six per cent.

Seven per cent and less than eight.

tal invested the previous calendar year shall pay at the rate of six dollars ($6) per mile. And any such company which so earned eight per cent or more upon its capital invested the previous calendar year shall pay at the rate of seven dollars ($7) per mile. Any such company not having had previous earnings shall pay at the rate of five dollars ($5) per mile: *Provided,* that no county shall levy any tax under this section. There may be levied and collected by every incorporated municipality in the State of North Carolina from each express company, for the privilege of doing business within the municipal limits of said incorporated municipalities, a privilege or license tax, to be computed and based on the population of said municipalities as follows: Incorporated municipalities having a population of five hundred people or less, five dollars per annum; incorporated municipalities having a population of five hundred people and not exceeding one thousand people, ten dollars per annum; incorporated municipalities having a population of one thousand and not exceeding five thousand people, twenty dollars per annum; incorporated municipalities having a population of five thousand and not exceeding ten thousand people, thirty dollars per annum; incorporated municipalities having a population of ten thousand and not exceeding twenty thousand people, fifty dollars per annum; incorporated municipalities having a population of exceeding twenty thousand people, seventy-five dollars per annum: *Provided further,* that nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce, or upon any business transacted for the Federal Government.

Eight per cent or more.

Companies not having previous earnings.

Proviso: No county tax.

Municipal tax.

Towns of 500 or less.

500 and not exceeding 1,000.

1,000 and not exceeding 5,000.

5,000 and not exceeding 10,000.

10,000 and not exceeding 20,000.

Exceeding 20,000.

Proviso: Interstate commerce and Federal government.

Sec. 80. *Telegraph companies.*

Each and every person, firm, or corporation operating within this State the apparatus necessary to communication by telegraph shall pay, for the privilege of engaging in such business, to the State

Telegraphic companies.

an annual license tax of five dollars per mile for each pole mile of such telegraph line owned or operated by them within the State, as shown by report of such telegraph company to the Tax Commissioners under section forty-eight of the Machinery Act, and it shall be the duty of the Tax Commissioners to certify to the State Auditor the number of miles of line operated by such telegraph company in this State, and it shall be the duty of the State Treasurer to collect the tax as herein levied upon the basis of mileage as reported: *Provided,* that nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce or upon any business transacted for the Federal Government: *Provided,* that no county shall levy any additional tax under this section, but towns may levy the following taxes: Those having a population of one thousand and not exceeding five thousand, ten dollars; from five thousand to ten thousand, fifteen dollars; from ten thousand to twenty thousand, twenty dollars; over twenty thousand, fifty dollars.

Mileage reported to Auditor.
Treasurer to collect tax.
Proviso: Interstate commerce and business of Federal government.
Proviso. No county tax.
Town tax.

Sec. 81. *Telephone companies.*

On every telephone company doing business in this State, an annual tax of three per cent on the gross receipts of such telephone company within the State, reckoning for the purpose of ascertaining the amount of such gross receipts the proportion of the interstate business done within the State which is properly credited to North Carolina: *Provided,* that if any such company shall file with the Board of State Tax Commissioners a statement, signed and sworn to by its principal officer in this State, showing that at least one-quarter of the entire assets of his company, when his company has assets, are invested in and are maintained in any or all of the following securities or property, viz.; bonds of this State or of any county, city, or town of this State, or any property situated in this State and taxable therein, then the tax shall be one and one-half per

Telephone companies.
Tax on receipts.
Ascertainment of receipts.
Proviso: Investments reducing tax.

cent; and if the amount so invested shall be one-half of its total assets the tax shall be two per cent; and if the amount so invested shall be three-fourths of its total assets the tax shall be one per cent. The superintendent, general manager, or other chief officer of every such company shall make and return, under oath, to the Treasurer of the State, within ten days after the first day of January, April, July, and October of each year, the amount of the gross receipts of the company for the quarter ending on the first day of the month immediately preceding, and pay to the Treasurer the tax herein imposed at the time of making such return. It shall be the duty of each sheriff to report to the Treasurer any such company doing business in his county. In case of default of such return and payment of tax, the company shall pay a penalty of one thousand dollars, to be collected by such sheriff as the Treasurer of the State shall designate, by distress or otherwise: *Provided further,* no county, city, or town shall be allowed to impose an additional tax, license, or fee provided in this section, except the *ad valorem* tax.

Returns of gross receipts.

Payment of tax.

Sheriff to report companies doing business in his county.

Penalty for default in return or payment.

Proviso: No County, city, or town tax.

Franchise tax.

Sec. 82. *Franchise tax on corporations.*

Domestic corporations. Between the first day of May and the first day of July, one thousand nine hundred and thirteen, and annually thereafter during the month of May, each corporation organized under the laws of this State shall make a report in writing to the State Tax Commission in such form as the Commission may prescribe.

Domestic corporations to report annually.

Sec. 82 (1). Such report shall be signed and sworn to before an officer authorized to administer oaths, by the president, vice-president, secretary, or general manager of the corporation, and forwarded to the Commission.

Report to be verified.

Report to contain:

Sec. 82 (2) Such report shall contain—

Name of corporation.

(*a*) The name of the corporation.

Principal office.

(*b*) The location of its principal office.

Names and address of officers.

(*c*) The name of the president, secretary, treasurer, and members of the board of directors, with postoffice addresses of each.

Date of election.

(*d*) The date of the annual election of officers.

(*e*) The amount of authorized capital stock and the par value of each share.

Amount of stock and par value of shares.

(*f*) The amount of capital stock subscribed, the amount of capital stock issued and outstanding, and the amount of capital stock paid up.

Amount of stock subscribed, issued and outstanding, and paid up.

(*g*) The nature and kind of business in which the corporation is engaged, and its place or places of business.

Nature and kind of business. Places of business.

(*h*) The change or changes, if any, in the above particulars made since the last annual report.

Changes since last report.

Sec. 82 (3). Upon the filing of the report provided for in the last three preceding subsections, the Commission, after finding such report to be correct, shall, on or before the first Monday of August, determine the amount of the subscribed or issued and outstanding capital stock of each such corporation. On the first Monday in August, or as soon thereafter as practicable, the Commission shall certify the amount so determined by it to the Auditor of the State, who shall charge for collection on or about August fifteenth, as herein provided, from such corporation, a fee of one-tenth of one per cent upon its subscribed or issued and outstanding capital stock, which fee shall not be less than ten dollars in any case. Such fee shall be payable to the Treasurer of the State on or before the first day of the following October. No county, city, or town shall have the power to levy any franchise tax under this section.

Commission to determine subscribed or issued and outstanding stock.

Certificate to Auditor.

Fee charged for collection.

Minimum of fee.

Fee payable to Treasurer.

No county, city, or town tax.

Sec. 82 (3½). That where a report required to be made under the provisions of this section to the State Tax Commission by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which report is made, or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under the rules laid down in section 82 of this act to be less than one-half of the assessed

Calculation of franchise tax when stock is less than one-half of value of property.

value for taxation of all the property of such company in this State for the year in which such report is made, the measure of the extent to which the corporate franchise of any such corporation is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation in this State.

Reports from foreign corporations.

Sec. 82 (4). *Foreign corporations.* Annually during the month of July, each foreign corporation doing business in this State, and owning or using a part or all of its capital or plant in this State, and subject to compliance with all other provisions of law, and in addition to all other statements required by law, shall make a report in writing to the Commission in such form as the Commission may prescribe.

Verification of report.

Sec. 82 (5). Such report shall be signed and sworn to before an officer authorized to administer oaths, by the president, vice-president, secretary, superintendent, or managing agent in this State and forwarded to the Commission.

Report to contain:

Sec. 82 (6). Such report shall contain—

Name and domicile of corporation.

(*a*) The name of the corporation and under the laws of what State or county organized.

Principal office.

(*b*) The location of its principal office.

Name and address of officers.

(*c*) The names of the president, secretary, treasurer, and members of the board of directors, with the postoffice address of each.

Date of election.

(*d*) The date of the annual election of officers.

Amount of capital and par value of shares

(*e*) The amount of authorized capital stock, and the par value of each share.

Amount of stock subscribed, issued, and paid up.

(*f*) The amount of capital stock subscribed, the amount of capital stock issued, and the amount of capital stock paid up.

Nature of business and places of business.

(*g*) The nature and kind of business in which the company is engaged, and its place or places of business, both within and without the State.

(*h*) The name and location of its office or

offices in this State, and the name and address of the officers or agents of the corporation in charge of its business in this State.

Location of offices in this State and name and address of agent in charge.

(*i*) The value of the property owned and used by the company in this State, where situated, and the value of the property owned and used outside of this State, and where situated.

Value and location of property in this State and outside this State.

(*j*) The volume of business done by the company in this State.

Volume of business in this State.

(*k*) The volume of business done by the company outside of the State, and where the said business is done.

Volume of business outside of State.

(*l*) The change or changes, if any, in the above particulars, made since the last annual report.

Changes since last report.

Sec. 82 (6½). *Railroads.* Every railroad company doing business in this State shall annually on or before the thirtieth day of July make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for *ad valorem* taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one per cent (0.1%) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of

Railroad companies to report annually.

Commission to certify values to Auditor.

Basis of calculation.

Rate of franchise tax.

When due.

October in each year. If any such company shall fail to make the report provided for, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city or town shall be allowed to collect any taxes under this section.

Approximation if company delinquent.

No county, city, or town tax.

Commission to assess and fix proportion.

Sec. 82 (7). Upon the filing of the report provided for in subsections four, five and six, the commission, from the facts thus reported, and any other facts coming to its knowledge bearing upon the question, shall, on or before the first Monday in September, assess and fix the proportion of the subscribed or issued and outstanding capital stock of the company represented by its property or business in this State, and certify the same to the Auditor of the State on or before the first Monday in October.

Certificate to Auditor.

Auditor to charge for collection.

Sec. 82 (8). On or before October fifteenth the Auditor of State shall charge for collection, as herein provided, annually from such company, in addition to the initial fees otherwise provided for by law, for the privilege of exercising its franchise in this State, a fee of one-tenth of one per cent upon the proportion of the subscribed or issued and outstanding capital stock of the corporation represented by property owned and used for or business transacted in this State as found and certified by the State Tax Commission, which fee shall not be less than ten dollars in any case. Such fee shall be payable to the Treasurer of the State on or before the first day of the following December. No county, city or town shall have the power to levy any franchise tax under this section.

Minimum charge.

When fee payable.

No county, city, or town tax.

Companies elsewhere taxed.

Sec. 82 (9). That nothing in the nine preceding subsections of this act shall apply to banks, insurance companies, fraternal, beneficent associations, building and loan associations, express, telephone

or telegraph companies, or other corporations, upon which a franchise tax may be levied in other sections of this act.

Correction of findings.

Sec. 82 (10). *General provisions.* Between the dates herein fixed for the determination of the amount of subscribed or issued and outstanding capital stock of a domestic corporation and the proportion of the authorized capital stock of a foreign corporation, represented by property owned and used or business transacted by it in this State, and the dates herein fixed for the certification to the Auditor of State of such amount or proportion, the commission may, on the application of any person or company interested, or on its own motion, review and correct its findings.

Treasurer to give receipts.

Sec. 82 (11). Upon the payment of the tax or fee provided for in this act to the Treasurer of State, the Treasurer of State shall make out and deliver to the public utility or corporation so paying a receipt for the payment by such public utility or corporation of the tax or fee herein provided for.

Lien for fees, taxes and penalties.

Sec. 82 (12). The fees, taxes, and penalties required to be paid by this act shall be the first and best lien on all property of the public utility or corporation, whether such property is employed by the public utility or corporation in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the creditors and stockholders thereof.

Penalty for failure or neglect to report.

Sec. 82 (13). *Penalties.* If a public utility or corporation required to file a report by any provision of this act fails or neglects to make such report as required herein, it shall be subject to a penalty of ten dollars per day for each day's omission after the time limited in this act for making such report.

Sec. 82 (14). *Obsolete.*

Collection of taxes, fees, and penalties, by sheriff.

Sec. 82 (15). Such taxes and fees and penalties thereon may be certified by the State Audi-

tor to the sheriff of the county in which any such company has its home office, or of any county in which any such company may own property, for collection as provided in section four of this act, and if collection is not made in this way such taxes or fees and penalties thereon may be recovered by an action in the name of the State, which may be brought in the Superior Court of Wake County, or in any county in which such corporation has an office or place of business, or in which such public utility is doing business, or the line of any street, suburban, or interurban railroad company or railroad company is located, and such Superior Court shall have jurisdiction of such action regardless of the amount involved therein. The Attorney-General, on request of the State Treasurer, shall institute such action in the Superior Court of Wake County, or of any such counties as the State Treasurer may direct. In any such action it shall be sufficient to allege that the tax, fee, or penalty sought to be recovered stands charged on the delinquent duplicate of the Treasurer of State, and that the same has been unpaid for a period of thirty days after having been placed thereon.

Action for recovery.

Venue.

Jurisdiction.

Attorney-General to institute action.

Sufficient allegations.

Foreign corporations subject to liabilities and restrictions as home companies.

Sec. 82 (16). All foreign corporations, and the officers and agents thereof, doing business in this State, shall be subject to all the liabilities and restrictions that are or may be imposed upon corporations of like character, organized under the laws of this State, and shall have no other or greater powers. Every contract made by or on behalf of any such foreign corporation, affecting the liability thereof, or relating to its property within this State, before it shall have complied with the provisions of section eleven hundred and ninety-four of the Revisal of one thousand nine hundred and five, shall be wholly void on its behalf and on behalf of its assigns; but shall be enforceable against it or them. Nothing contained in this subsection

Contracts by or on behalf of foreign corporations.

Corporations.

shall be held or construed to apply to insurance corporations, fraternal, beneficiary associations, or building and loan associations, banking, railroad express, telephone, and telegraph companies.

Delinquency of corporations certified to Secretary of State.

Sec. 82 (17). If a corporation, wherever organized, required by the provisions of this act to file any report or return or to pay any tax or fee, either as a public utility or as a corporation, organized under the laws of this State, or as a foreign corporation for profit doing business in this State and owning and using a part or all of its capital or plant in this State, or as a sleeping-car, freight line, or equipment company, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this act for making such report or return or for paying such tax or fee, the Commission shall certify such fact to the Secretary of State. The Secretary of State, shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this State by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of any such foreign corporation to do business in this State, by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The Secretary of State shall immediately notify such domestic or foreign corporation of the action taken by him.

Action by Secretary of State as to home companies.

As to foreign corporations.

Effect of action.

Secretary of State to notify corporation of action.

Penalty for exercising corporate powers after action by Secretary of State.

Sec. 82 (18). Any person or persons who shall exercise, or attempt to execrise any powers, privileges, or franchises under the articles of incorporation or certificate of authority, after the same are canceled, as provided in any section of this act, shall be fined not less than one hundred dollars nor more than one thousand dollars.

[CHAPTER 1, PUBLIC LAWS, EXTRA SESSION, 1920]

An Act to Revise and Limit Tax Rates for the Year 1920 in Compliance With Provisions of the Revaluation Act; to Provide Additional Revenue for the State From Franchise and License Taxes, and for Other Purposes.

The General Assembly of North Carolina do enact:

Section 1. That the assessment or valuation of property made under the provisions of chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen is hereby approved by the General Assembly and adopted as the basis for the levy of tax rates by the State and by all subdivisions of the State for which taxes are levied for the year one thousand nine hundred and twenty, and the valuation of real property so fixed shall be adopted for the years one thousand nine hundred and twenty-one, one thousand nine hundred and twenty-two, and one thousand nine hundred and twenty-three, except as such valuations may be hereafter changed according to law.

Sec. 2. That section two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen entitled "An Act to Raise Revenue" be repealed and the following substituted for section two of that act:

"Section 2. Poll and property tax.

"That no tax on property or polls shall be levied for the year one thousand nine hundred and twenty for the use of the State or for the State pension fund. There shall be levied and collected for the year one thousand nine hundred and twenty for the benefit of the State public school fund an *ad valorem* tax of thirteen cents on every one hundred dollars value of real and personal property in this State required to be listed by the revenue laws of the State and on each taxable poll or male between the ages of twenty-one

and fifty years, except the poor or infirm whom the county commissioners may declare and record fit subjects for exemption, there shall be levied and collected for the year one thousand nine hundred and twenty a tax of thirty-nine cents."

Sec. 3. That section three of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be repealed and designated as "obsolete."

Sec. 4. That the taxes levied in the foregoing section two shall be collected and paid into the State Treasury for the benefit of the public school fund in the manner provided by law for the collection and settlement of State taxes.

Sec. 5. That at any regular or called meeting of the boards of county commissioners of the several counties of the State, or governing authorities of the municipalities of the State, or of any other body in which there is vested authority to levy tax rates, held after the ratification of this act, rates of tax for the year one thousand nine hundred and twenty may be levied under existing authority of law upon the following basis and subject to the following limitations:

There shall first be ascertained the taxable value upon which the tax rates were levied for such county, municipality or special tax district for the year one thousand nine hundred and nineteen, and the total amount of revenue produced by the rate of tax so levied in the year one thousand nine hundred and nineteen. An addition of ten per cent may be made to such total amount of revenue for such county, municipality or special tax district for the year one thousand nine hundred and nineteen, and the total amount of revenue thus ascertained shall be the maximum limit for which rates may be levied in the year one thousand nine hundred and twenty; that is to say that such rate may be calculated with relation to the total amount of taxable property listed for each such county, municipality or special tax district as will yield in revenue for the year one thou-

sand nine hundred and twenty an amount not exceeding the revenue for the year one thousand nine hundred and nineteen plus ten per cent as ascertained in the number herein provided. Any rate of tax levied by any tax levying authority of any county, municipality or special tax district for the year one thousand nine hundred and twenty in excess of the rate herein authorized shall be held to be an illegal rate of tax in so far as such levy may be in excess of the amount of levy herein authorized: *Provided,* fractions of cents may be disregarded in making such tax levy.

Sec. 7. That for the purpose of providing additional revenue for the State in lieu of *ad valorem* tax on property heretofore levied by the State, the following taxes shall be levied and collected in the manner now provided by law for collection of similar taxes:

Sec. 7a. Franchise tax on corporations.

That the franchise tax provided in section eighty-two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be amended by striking out section eighty-two (3) and of section eighty-two (8) the words "one twenty-fifth of one per cent" where they appear in said sections, and substituing in lieu thereof the words "one-tenth of one per cent," and by striking out of line twelve of section eighty-two (3) and line ten of section eighty-two (8) the word "five" and inserting in lieu thereof the word "ten."

Sec. 7b. That where a report required to be made by section eighty-two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen to the State Tax Commission by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year one thousand nine hundred and twenty, or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under the rules laid down

in section eighty-two of the Revenue Act to be less than half of the assessed value for taxation of all the property of such company in this State for the year one thousand nine hundred and twenty, the measure of the extent to which the corporate franchise of any such corporation is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation for the year one thousand nine hundred and twenty in this State.

Sec. 7d. Privilege or franchise tax on railroads. That section seventy-seven and seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be repealed and that section eighty-two (9) of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be amended by striking out of the third of the said subsection the word "railroad;" that section eighty-two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be amended by inserting a new subsection to be designated as section eighty-two (6½) as follows:

"Section 82 (6½)—Railroads. Every railroad company doing business in this State shall on or before the first day of October, one thousand nine hundred and twenty, and on or before the thirtieth day of July annually thereafter, make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to

which every such railroad company is exercising its franchise in this State shall be found to be the value of the property tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for *ad valorem* taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one (0.1%) per cent of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for on or before the first day of October, one thousand nine hundred and twenty, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city or town shall be allowed to collect any taxes under this section. The tax imposed by this section shall be in addition to the tax imposed by section seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen, prior to the ratification of this act, only in so far as the tax imposed by this section exceeds the tax imposed by section seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen, and if the tax imposed by section seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen for the year one thousand nine hundred and twenty have been paid by any railroad company such amount so paid shall be credited on the tax imposed by this section.

CHAP. 40, PUBLIC LAWS 1921.

AN ACT TO TRANSFER THE POWERS AND DUTIES OF THE STATE TAX COMMISSION TO THE STATE DEPARTMENT OF REVENUE.

The General Assembly of North Carolina do enact:

Date for transfer.

Section 1. From and after the first day of May, one thousand nine hundred and twenty-one, all the powers and duties imposed by any act of law, including Revenue and Machinery Acts, enacted by the present session of the General Assembly, upon the State Tax Commission, shall be transferred to and imposed upon a department to be known as the State Department of Revenue, created by this act, to be administered by the Commissioner of Revenue, to be appointed as provided in this act. All such powers and duties, except as otherwise provided herein, shall devolve upon the Commissioner of Revenue, and wherever in the revenue laws of the State the words "State Tax Commission" are used such words shall, after May first, one thousand nine hundred and twenty-one, be held to mean Commissioner of Revenue, except as otherwise provided in this act.

Transfer of powers and duties.

State Department of Revenue.

Commissioner of Revenue.

Office created.

Appointment.

Sec. 2. There is hereby created the office of Commissioner of Revenue, to be appointed by the Governor, by and with the advice and consent of the Senate, and if such appointment is made when the Senate is not in session, confirmation may be by the Senate at the next session. The term of office shall be for four years from and after the first day of May, one thousand nine hundred and twenty-one, and the succeeding commissioner of revenue shall be nominated and elected in the year one thousand nine hundred and twenty-four, in the manner provided for the nomination and election of other State officers, and quadrennially thereafter.

Term of office.

Election of successor.

Powers and duties as of State Tax Commission.

Sec. 3. The powers and duties now exercised by the State Tax Commission as a State Board of

Appellate authority.

Equalization, and the appellate authority exercised by the said State Tax Commission in determining appeals from valuations made by assessing officers in the several counties of the State, shall, from and after the first day of May, one thousand nine hundred and twenty-one, be held and exercised by a State Board of Equalization, composed of the Commissioner of Revenue, the chairman of the Corporation Commission, and the Attorney-General, who shall be *ex officio* members of and constitute the State Board of Equalization, to have and exercise the powers and duties now imposed by law upon the State Tax Commission as a State Board of Equalization, and as an appellate court, to hear and determine appeals from valuation of property by assessing officers in the several counties. The said board shall meet upon call of the Commissioner of Revenue as often as may be necessary to discharge the duties imposed by law upon the said board.

State Board of Equalization.

Ex officio members.

Meetings of board.

Supreme Court, U. S.
FILED
NOV 27 1922
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

IN EQUITY. No. 382.

ATLANTIC COAST LINE RAILROAD COMPANY, *Appellant*,

vs.

A. D. WATTS AND A. D. WATTS AS COMMISSIONER OF REVENUE, ET AL., *Appellees.*

REPLY BRIEF OF APPELLANT.

THOMAS W. DAVIS,
HARRY SKINNER,
Solicitors for Appellant.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

IN EQUITY. No. 382.

ATLANTIC COAST LINE RAILROAD COMPANY, *Appellant,*

vs.

A. D. WATTS AND A. D. WATTS AS COMMISSIONER OF REVENUE, ET AL., *Appellees.*

REPLY BRIEF OF APPELLANT.

We desire to call to the attention of the Court, in addition to the points already made, the following concrete propositions:

I.

The assessment complained of is that of 1921, which violates the statutory method and is, therefore, on a wrong principle. This has nothing to do with fraud or systematic discrimination.

Section 28(b) of Chapter 38 of the Laws of 1921 reads in part as follows:

"Sec. 28(b). *Specific complaints.*

"The board of county commissioners of the several counties shall have and exercise authority to hear and determine specific complaints of over-valuation or under-valuation of any particular tracts of real property, and after the general equalization order provided for in the preceding subsection has been made, any person who owns property subject to taxation, and who finds that said property stands assessed for taxation, after su h equalization order has been made, at an amount in excess of the actual value of such property on the first day of May, one thousand nine hundred and twenty-one, may have the right to have the same *reassessed* and *reappraised* by the said board, by filing with the clerk of the board of county commissioners, some time during the month of May, one thousand nine hundred and twenty-one, etc." (Italics ours.)

Section 28(g) reads as follows:

"Sec. 28(g). Any taxpayer owning property assessed originally by the State Tax Commission may make application to the State Tax Commission for a review of the assessment of its property in the same manner herein provided for complaint by property owners before the county boards, and the State Tax Commission may hear and determine such complaints."

The railroads made application to the Commissioner of Revenue for review under the above Section 28(g), and it is our contention that when we

applied for the review or reassessment, contending that the assessment was in excess of actual value of the property, that the Commissioner of Revenue was compelled to have some measure for determining the correctness of our contention. That measure was whether or not the assessment of 1921 was in excess of true value according to law as it then existed in the State of North Carolina, and the law then in existence and which should have controlled the Commissioner of Revenue was Sections 64 and 65 of the Machinery Act, which Sections were a part of the Act of March 10, 1919, and also of the Act of 1921. The power to review or reassess or reduce the assessment is equivalent to making a new assessment and the result is a new assessment. We submit that when the Revenue Commissioner adopted the assessment of 1920 he adopted the method of arriving at it. If Appellants have shown that the assessments complained of did not follow those Sections, we submit that we have sustained this point. We ask that the Court bear in mind that, irrespective of what method was adopted under Section 64, no method, so far as an interstate railroad was concerned, could be legally adopted which did not comply with Section 65, which provided for the finding of a total value and a division thereof on a mileage basis. If there be any contention that Section 65 was followed, the facts contained in the Tax Commission's affidavit show to the contrary. If we admit, for argument's sake, that there is no statement in the record affirmatively showing that the Tax Commission and the Commissioner of Reve-

nue did not consider all the elements and finally come to the selected method as the correct result of such consideration, we still have the proof that Section 65 was not followed, because Appellees' contention only extends to using the investment account in our case, for which there is no authority, or the earnings within the State in the case of the Southern Railway and not the earnings for the entire line.

Without repetition, we refer the Court in this connection to the reply brief filed by the Southern Railway Company in case No. 368 as setting forth more fully the foregoing contentions.

II.

If it be held that we have to go back to the 1920 assessment, which was approved by the Legislature, we desire to say: It is admitted that what the Legislature could have authorized it can as a general proposition ratify if it could authorize at the time it ratifies, but that is not the proposition that we have before the Court. Our proposition is that the Tax Commission, by its own statement, has sworn that it made certain of the assessments on one basis and certain others on an entirely different basis and, therefore, there was discrimination between members of a class, contrary to the Uniformity Section of the North Carolina Constitution and the enforcement of such assessments deprives these Appellants of the equal protection of the laws guaranteed by the Federal Constitution. It matters not whether such assessments, if they do violate the Constitution, are made by the

Tax Commission or made by the Legislature. The Legislature is just as powerless to enact a law contrary to the Constitution as is the Tax Commission to enforce such a law. For the facts on this, we ask leave to again refer to the reply brief of Southern Railway Company.

III.

As will have been observed, in 1920 all taxpayers, including railroads, were theoretically put upon an equality, namely, assessed at one hundred per cent (which we deny as to railroads and say that it was in excess of one hundred per cent). The Legislature destroyed that equality by enacting Section 28(a), which gave to the County Boards of Equalization the right to make an average percentage reduction in all real values in the counties. The railroads were given no similar right and no such reduction. This Act in itself, we submit, being an average reduction, can not be held to be compliance with the North Carolina Constitution, which requires the assessment of each individual's property at true value, and it does not permit any average assessment of any kind, and, therefore, that Section of the Act in itself shows a scheme of discrimination against the railroads which was taken advantage of by sixty-seven counties. At this point, permit us to say that the reason the thirty-three counties which did not make average reductions did not complain is because there was not in 1921 any general levy applicable throughout the State for State purposes. Consequently, the thirty-three counties decided that, having a

given amount of money to raise, they would keep their rate of taxation down and their assessments up, which would bring in the same amount of money as to reduce their assessments and increase their rate. If there had been a general State levy, then the thirty-three counties would have been discriminated against and would not for a moment have permitted the reduction in assessment to continue in the sixty-seven counties without similar relief. The railroads were harmed in that their property was held up to the high assessment in the sixty-seven counties and throughout the State and they were made to pay the increased county rates of taxation, the county rates being increased in amounts varying from 12c to 84c per hundred dollars. We do not think that Appellants should be deprived of protection under the law simply because the action of the sixty-seven counties did not in the year 1921 adversely affect the remaining thirty-three counties. We further submit that this is not sporadic; that it is a general and intentional discrimination against railroads.

The further material facts on this discrimination, created by the law itself, and on the general contention of systematic discrimination to which the Court's attention is specifically called is the following quotation from the Tax Commission's Report which explains why railroads were increased only double and other property quadruple:

> "The new assessment of railroads does not represent as great an increase as the average increase of other property, for the reason that

they were assessed relatively higher than other property before, etc." (Report of Tax Commission to Governor, dated August 10, 1920, rec. 79.)

and, as to lands generally, the following quotation from their report:

"The United States Department of Agriculture makes an annual appraisal of the average value of farm lands in all states. Their estimate of 1919 average value for this State was $47.00 per acre; for 1920, $75.00 per acre. The revaluation average was $38.94, or $8.00 per acre less than the 1919 average. This demonstrates that the revaluation values did not approximate the peak of speculative values." (P. 73, Southern Railway record.)

The evidence introduced of all deeds recorded from January 1, 1921, to July 1, 1921, some six thousand in number, covering transfers totaling thirty million dollars of property, assessed at twenty-two million dollars (using round figures) was the only period available, the revaluation having taken place in 1920 and to have gone back of the revaluation would not have been of value.

In 1920 the railroads, notwithstanding their assessments had been doubled, paid less taxes than they did in former years, due to the lower rate of taxation, whereas other property holders paid more taxes. This situation could not continue. When all real assessments other than railroads were reduced in the sixty-seven counties and tax rates increased, the status prior to revaluation was resumed.

IV.

We desire to emphasize the contention made in all briefs in chief, except the Norfolk Southern, that Section 82(3½) absolutely applied and, as a consequence, the franchise taxes, if they are valid, should have been one-half of the amount assessed. We have nowhere seen any answer that at all satisfies our minds on this proposition.

V.

We desire to respectfully point out that the franchise or privilege tax is void for the reasons heretofore given and insisted upon, namely:

(1) That it is a property tax. Being a property tax and not levied on other persons and corporations, it violates the Uniformity Section of the North Carolina Constitution and also violates the statute of North Carolina, Section 3 of the Machinery Act of 1921, which provides, "no tax on any property in the State shall be levied for any of the uses of the State Government, etc."

(2) That it is a burden on interstate commerce.

(3) That the payment of it is a condition precedent to the doing of any business, including interstate business, and is in violation of the commerce clause of the Constitution of the United States.

Respectfully submitted,

THOMAS W. DAVIS,
HARRY SKINNER,
Solicitors for Appellant.

FILED
MAY 15 1922
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

SOUTHERN RAILWAY COMPANY,
Appellant,
vs.
A. D. WATTS, ET AL.,
Appellee.

In Equity
No. 368

BRIEF IN SUPPORT OF PETITION FOR STAY PENDING APPEAL TO THIS COURT UNDER SECTION 266 OF THE JUDICIAL CODE.

S. R. PRINCE,
Attorney for Appellant.

L. E. JEFFRIES,
MANLY, HENDREN & WOMBLE,
C. O. AMONETTE,
Of Counsel.

PRESS OF THE BYRNARTH COMPANY, WASHINGTON

CASES CITED.

PAGE

Cotting vs. Kansas City Stock-Yards Co., 82 Fed. 850 11

Cotting vs. Kansas City Stock-Yards Co., 183 U. S. 79, 80, 22 Sup. Ct. 30, 46 L. Ed. 82 ..... 5, 7

Grand Trunk Ry. Co. vs. Michigan Railroad Commission, 198 Fed. 1009 6

Hovey vs. McDonald, 109 U. S. 150, 161, 3 Sup. Ct. 136, 27 L. Ed. 888 ..... 5, 7, 9, 11

In re Alexander McKenzie, Petitioner, 180 U. S. 536 13

Journal of Commerce and Commercial Bulletin vs. Burleson, 229 U. S. 600 13

L. & N. R. R. Co. vs. Siler, 186 Fed. 176 5

L. & N. vs. Railroad Commission, 208 Fed. 29 8

N. C. & St. L. Ry. Co. vs. McConnell, 82 Fed. 65 14

Ohio River & W. Ry. Co. vs. Ditty, 203 Fed. 537 6

Omaha and Council Bluffs Street Railway Co. vs. I. C. C., 222 U. S. 582 12

Phoenix Ry. Co. of Arizona vs. Geary, 209 Fed. 694 7

Phoenix Ry. Co. of Arizona vs. Geary, 239 U. S. 277 7

U. S. vs. Shipp, 203 U. S. 563 13

IN THE

Supreme Court of the United States

SOUTHERN RAILWAY COMPANY, *Appellant,* *vs.* A. D. WATTS, ET AL., *Appellee.*	In Equity No. 927

BRIEF IN SUPPORT OF PETITION FOR STAY PENDING APPEAL TO THIS COURT UNDER SECTION 266 OF THE JUDICIAL CODE.

Statement of Facts

The petition filed sets forth the basis of this suit and the successive steps taken in this suit up to date. As concisely as can be stated, the situation of petitioner is:

For the year 1919 the ad valorem assessment of appellant in the State of North Carolina was

$46,869,942.00. In 1920 the ad valorem assessment was increased to $96,605,694.00. Appellant paid its 1920 taxes thereon under written protest. Due to the reduced tax rate and there being no State tax, the actual amount of taxes paid in 1920 on the higher assessment was less than the tax paid in 1919 on the reduced assessment. In 1921 appellant's assessment was $96,306,357.00, being the same as 1920, except for minor changes in local property lying off the right of way. A hearing was had before the Commissioner of Revenue and testimony introduced to show that the assessment was in excess of the true "actual value," and it was earnestly contended that appellant was entitled to the same horizontal reductions on its right of way land in the several counties as had been given all other real property in said counties. The assessment was not reduced.

In 1919 the General Assembly of North Carolina passed a law (Laws of North Carolina 1919, page 115) providing for a revaluation of all the property in the State. At the Extra Session in 1920 (Public Laws, Extra Session, 1920, Chapter 1) the Legislature adopted the revaluation. In that law (Section 7) it was provided that there should be no ad valorem tax for the use of the State, but in lieu of that there should be levied a franchise tax. Under this law, the franchise tax on this railway company was increased from $10.00 per mile to one-tenth of one per cent on the ad valorem assessment. Under this, appel-

lant's franchise tax was increased from $10,930.00 in 1919 to $96,306.00 in 1921.

The next step was the enactment of Section 28(a) of the Machinery Act of 1921 in which County Boards were given the right to make a horizontal reduction in assessments in their respective counties. The County Boards did not have the right to reduce the railroad's assessments, because they did not make the assessments and had no jurisdiction of them. Thirty-two counties through which appellant operates made horizontal reductions in the assessment of real property ranging from 10 to 50 per cent. The Commissioner of Revenue declined to make any reduction in appellant's property. In all except two counties through which appellant operates there was a heavy increase in the rate of taxation ranging from 12¼ to 84 cents per hundred dollars. If the assessment remains, appellant will pay in actual taxes for the year 1921 the sum of $1,243,-715.00, an increase of $368,622.00 over 1920. Under an agreement of counsel, approved by the Court, appellant has paid its taxes on a sixty million dollar valuation and the amount paid to counties, cities, towns and school districts is $61,000.00 in excess of the amount paid in 1920 on the ninety-six million dollar valuation. This is due to the increase in the rate of taxation.

The State in its answer avers that the assessment of ninety-six million dollars for 1921 is the true actual value of appellant's property. Appel-

lant shows that it is in excess of the true actual value. Under the capitalization of earnings plan, it was excessive to the amount of twenty-five million dollars. Under the market value of stock and bonds plan, it was excessive to the extent of fifty million dollars. Under the replacement value, it was excessive to the extent of thirty-five million dollars.

Real property generally in the State was assessed for the year 1921 at 67 per cent of its true value, as evidenced by a complete list of all deeds recorded in every county in the State January 1, 1921, to July 1, 1921, where the consideration was in excess of $1,000.00. This list contained in excess of 6,400 deeds and showed the deed value as compared with the assessed value. The total of the recorded deed value was $30,598,475.24 and the total assessed value of the same property was $20,373,684.07, or approximately 67 per cent.

Brief.

Petitioner is granted by Section 266 of the Judicial Code an appeal to this Court from the denial of a restraining order by the District Court and the two judges called to his assistance. If the appeal is to be of any value to the petitioner, the status quo should remain until that appeal can be heard and determined. Appellant thought and still thinks that the Three Judge Court had the power and that it was its duty to maintain

the status until the appeal could be heard. That view is based upon the following decisions:

In the case of L. & N. R. R. Co. vs. Siler, 186 Fed. 176, the Three Judge Court continued the status quo pending the appeal. The Court said, beginning on page 203:

> "It follows that the motion for an interlocutory injunction in both its branches must be denied. However, the questions involved are of such importance that we assume that a review of our conclusions will be desired by complainant, pursuant to the special provision for such review found in section 17 of the act of June 18, 1910. If the Supreme Court, on such review, shall decide that complainant was entitled to this injunction, then it is apparent that our present refusal to grant the injunction would result in irremediable injury, on account of failure to preserve the status quo. Applying the reasons of the rule stated in Hovey vs. McDonald, 109 U. S. 150,161,3 Sup.Ct.136, 27 L.Ed.388, and further stated in Cotting vs. Kansas City Stockyards Co., supra, 183 U. S. 79, 80, 22 Sup. Ct. 30, 46 L. Ed. 82, we have concluded that the restraining order of September 7, 1910, should be continued until an opportunity has been given for the complainant to secure a review, and subject to conditions which will be prescribed in the order to be entered."

Attention is directed especially to this language of that court: "If the Supreme Court, on such review, shall decide that complainant was entitled

to this injunction, then it is apparent that our present refusal to grant the injunction would result in irremediable injury, on account of failure to preserve the status quo." That language is equally applicable to this case. Should the Supreme Court of the United States decide that this complainant is entitled to the injunction applied for, then the refusal of this Court to preserve the status quo would result in irremediable injury to complainant.

In Ohio River & W. Ry. Co. vs. Ditty, 203 Fed. 537, the Three Judge Court continued in effect the restraining orders until the plaintiffs should have an opportunity to secure a review. The Court said, beginning on page 549, as follows:

> "It follows that the motion for an interlocutory injunction in each case must be denied. However, the questions involved are of such importance that we assume that a review of our conclusions will be desired by the plaintiffs, pursuant to the special provision found in section 266, Judicial Code (Act of March 3, 1911, c. 231, 36 Stat. 1162 (U. S. Comp. St. Supp. 1911, p. 236).
>
> "We have accordingly concluded that the restraining orders heretofore granted shall be continued until an opportunity has been given for the plaintiffs to secure a review, and subject to conditions which will be prescribed in the order to be entered."

In Grand Trunk Ry. Co. vs. Michigan Railroad Commission, 198 Fed. 1009, the Three Judge

Court withheld the formal entry of orders in accordance with its opinion in order to give complainants an opportunity to present application for a continuance of the restraining order pending the appeal. The Court said on page 1023 as follows:

> "It follows from what has been said that the application for interlocutory injunction should be denied, and the existing restraining order vacated. As the questions presented are important and review may be desired, the formal entry of the orders in accordance with this opinion will be withheld until September 5th, next, to give complainants opportunity to present such applications as they may desire for a continuance of the restraining order pending appeal (under the rule stated in Hovey vs. McDonald, 109 U. S. 150, 161, 3 Sup. Ct. 136, 27 L. Ed. 888, and Cotting vs. Kansas City Stockyards Co., 183 U. S. 79, 80, 22 Sup. Ct. 30, 46 L. Ed. 92) in case such appeal is to be taken."

In Phoenix Ry. Co. of Arizona vs. Geary, 209 Fed. 694, the Three Judge Court, while denying the motion for an interlocutory injunction, continued the restraining order in force pending the appeal. This action of the Three Judge Court was tacitly approved by the Supreme Court of the United States in Phoenix Ry. Co. vs. Geary, 239 U. S. 277, in which case the Court said on page 281 as follows:

> "The Court held (209 Fed. Rep. 694) that complainant's showing as to the alleged unreasonableness of the Commission's order was not sufficiently strong to warrant an injunction to restrain its enforcement *pendente lite*, but the temporary restraining order was continued in force pending the present appeal, taken direct to this court under the cited section of the code."

We have found no case to the contrary. The diligence of appellee's counsel found no case to the contrary, and their only reliance was the specially concurring opinion of Judge Shelby in the case of L. & N. vs. Railroad Commission, 208 Fed. 29, at page 58. It will be noted that this was a specially concurring opinion, the reasoning of which was not agreed to by the Court, and that the Court in that case ordered:

> "It is therefore ordered that the plaintiff's application for the allowance of the appeal and for supersedeas or a restraining order against the enforcement of the order of the Railroad Commission of Alabama, pending the appeal, be denied, the court not passing upon the merits of the application, and without prejudice to the right of the plaintiff to renew its application for an appeal and for a restraining order, pending the appeal, in the Supreme Court, or as it may be advised."

The Three Judge Court did not in this case pass upon the merits of the motion for a stay, but expressed the opinion that the Supreme Court

was the proper court to grant the stay (Order of April 15, 1922, p. 9 of Motion). It stayed the State's hand for two thirty-day periods upon the idea that not to do so would be an injustice to appellant. For the same reason that the State's hand was stayed sixty days, it should be stayed until this court can pass upon the appeal.

This Court has the undoubted power and authority to continue the stay in effect. This is the view of this Court on the general question of the powers of an equity court, which powers apply with equal force to an appeal under Section 266 of the Judicial Code. The leading case is that of Hovey vs. McDonald, 109 U. S. 150. In that case the Supreme Court of the United States discussed the power of the lower court to maintain the status quo on page 161 of the opinion as follows:

> "It was decided that neither a decree for an injunction nor a decree dissolving an injunction was suspended in its effect by the writ of error, though all the requisities for a supersedeas were complied with. It was not decided that the court below had no power, if the purposes of justice required it, to order a continuance of the status quo until a decision should be made by the appellate court, or until that court should order the contrary. This power undoubtedly exists, and should always be exercised when any irremediable injury may result from the effect of the decree as rendered; but it is a discretionary power, and its exercise or non-exercise is not an appealable matter. In recognition of this power,

and for the purpose of facilitating its proper exercise in certain cases, on appeals from the circuit courts, this court by an additional rule of practice in equity, adopted in October term, 1878, declared that:

"'When an appeal from a final decree, in an equity suit, granting or dissolving an injunction, is allowed by a justice or judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending or modifying the injunction during the pendency of the appeal upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party.' Rule 93."

The Court also said on page 162 as follows:

"Applying these principles to the present case, it is clear that the force of the decree was not affected by the appeal, although it was in the power of the special term to have continued the injunction and to have retained the fund in its control in the hands of the Receiver had it seen fit to do so. Judging only from what appears in the record, we cannot refrain from saying that, in this case, the latter course would have been eminently proper. It would have protected all parties and produced injury to none. But if the court failed to do what it might properly have done, such failure ought not to be visited upon the receiver, who was the mere instrument and hand of the court, and subject to its order. It was his duty to obey the decree as made."

Unless the stay applied for is granted the tax collecting authorities of North Carolina will proceed at once to collect the tax, the validity of which is involved in this suit. Should such tax be collected and disbursed prior to the determination of this case, a victory on the part of complainant would be fruitless.

The principles enunciated in Hovey vs. McDonald were applied in Cotting vs. Kansas City Stockyards Company, 82 Fed. 850. In that case the Court said on page 857 as follows:

> "The great importance of the questions involved in these cases will doubtless occasion an appeal to the Supreme Court of the United States, where they will be finally settled and determined. If, on such appeal, the Kansas statute complained of should be adjudged invalid for any reason, and in the meantime the statutory schedule of rates should be enforced, the stockyards company would sustain a great and irreparable loss. Under such circumstances, as was said, in substance, by the supreme court in Hovey vs. McDonald, 109 U. S. 150, 161, 3 Sup. Ct. 136, it is the right and duty of the trial court to maintain, if possible, the status quo pending an appeal, if the questions at issue are involved in doubt; and equity rule 93 was enacted in recognition of that right. The court is of opinion that the cases at bar are of such moment, and the questions at issue so balanced with doubt, as to justify and require an exercise of the power in question. Therefore, although the

bills will be dismissed, yet an order will at the same time be entered restoring and continuing in force the injunction which was heretofore granted, for the term of 10 days, and if, in the meantime, an appeal shall be taken, such injunction will be continued in force until the appeal is heard and determined in the supreme court of the United States; provided that, in addition to the ordinary appeal bond, the Kansas City Stock Yards Company shall make and file in this court its bond in the penal sum of $200,000, payable to the clerk of this court and his successors in office, for the benefit of whom it may concern, conditioned that, in the event the decree dismissing the bills is affirmed, it will, on demand, pay to the party or parties entitled thereto all overcharges for yarding and feeding live stock at its stock yards in Kansas City, Kan., and Kansas City, Mo., which it may have exacted in violation of sections 4 and 5 of the Kansas statute relative to stock yards, approved March 3, 1897, since an injunction was first awarded herein, to-wit, on April , 1897, and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation of said statute during the pendency of the appeal; said obligation to become void if the statute in question shall be pronounced invalid by the supreme court."

In the case of Omaha and Council Bluffs Street Railway Co. vs. I. C. C., 222 U. S., 582, this Court held that it was proper for an order to be entered by it to maintain the status quo pending an appeal

from the judgment of the Commerce Court sustaining an order of the Interstate Commerce Commission.

This Court, in the case of Journal of Commerce and Commercial Bulletin vs. Burleson, 229 U. S., 600, granted a restraining order pending a decision. See to the same effect In re Alexander McKenzie, Petitioner, 180 U. S., 536, at page 549, and U. S. vs. Shipp, 203 U. S., 563, at page 573.

Appellant has not delayed the trial of this case in any way for any length of time. It has offered to try the case on its merits at the June Term of the Federal Court. We still believe that it was the duty of the lower court to pass upon this question of maintaining the status quo, because that Court knew all the facts and had examined into the question in order to pass upon the motion for an interlocutory injunction, and it seems to us proper that that Court should pass upon the question of granting or not granting the stay. We have not the slightest doubt that if the lower court had been of the opinion that it was the proper forum to pass upon the question of maintaining the status that the stay would have been granted.

As to irreparable damage which will be suffered should the stay not be granted—appellant will be compelled to bring 160 suits to recover the amount of the taxes paid if finally held to be illegally paid, and that alone is irreparable damage. The irreparable injury should be determined not so much

upon the question of whether appellee may not recover the tax, but, we submit, is based upon the fact that the statute, 266 of the Judicial Code of the United States, allows appellant an appeal from the failure to grant an interlocutory injunction, and unless the status quo is maintained, this appellant is virtually denied the right given it, because an appeal will be valueless unless the status quo is maintained. This Court, in the exercise of its equity powers, is not held to an exercise of them, only in the case of irreparable damage. In other words, in this case the appellant is not required to show the irreparable injury in the strict sense of the word, in so far as the ultimate outcome is concerned. As stated, we have a right to the appeal, and if not to maintain the status will irreparably deprive us of it unless the relief sought is granted, then irreparable damage follows.

In the case of N. C. & St. L. Ry. Co. vs. M'Connell, 82 Fed., 65, the Railway sought an injunction against ticket scalpers, that is, persons who bought up unused portions of return trip tickets and sold them. The Court held that plaintiff was entitled to an injunction. On page 68 the Court discussed the relief or redress of the carrier in case the injunction was not granted. It held that complainants were without adequate redress at law, due to the large number of suits for small amounts which would have to be instituted if the carrier was confined to his remedy at law. The Court said on this particular point:

> "If 500 separate suits at law for breach of the contract in each ticket is the only mode of redress to the carrier, it requires no comment to show that here is a striking failure of justice. The injury is obviously irreparable."

In addition to that, there is no law permitting suit against the State for the recovery of the franchise tax of ninety-six thousand dollars, which is payable direct to the State, and if that tax be held illegal, there is no method prescribed to recover the sum. The State of North Carolina has not consented to be sued therefor.

Appellant is embarrassed in the briefing of this motion because it is refraining from discussing the merits of the controversy now pending on the appeal. The assessment so made and complained of will remain for three years, and the amount involved for this appellant is in excess of one million dollars.

The Court's attention is directed to the stipulation of record between counsel for the parties, that notwithstanding the stay granted by the lower court expires May 15th, the status quo is to remain until this Court has passed upon the motion here presented.

Respectfully submitted,

S. R. PRINCE,
Attorney for Appellant.

L. E. JEFFRIES,
MANLY, HENDREN & WOMBLE,
C. O. AMONETTE,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922

No. [illegible]

NORFOLK SOUTHERN RAILROAD COMPANY,

Appellant,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE OF THE STATE OF NORTH CAROLINA, ET ALS,

Defendants.

BRIEF OF APPELLANT

W. R. ROSMAN,
C. M. BAIN,
JOHN M. ROBINSON,
W. R. ROSMAN, JR.,
Solicitors for Appellant.

[illegible]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922

No. 383

NORFOLK SOUTHERN RAILROAD COMPANY,
Appellant,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE OF THE STATE OF NORTH CAROLINA, ET ALS,
Defendants.

BRIEF OF APPELLANT

W. B. RODMAN,
C. M. BAIN,
JOHN M. ROBINSON,
W. B. RODMAN, JR.,
Solicitors for Appellant.

INDEX

PAGE

Statement of Case, with grounds of appeal ---------- 1
Trade Tax, Validity of ---------- 3
Trade Tax, Statement of Facts ---------- 3
Trade Tax, Assignments of Error ---------- 5
Trade Tax, Argument ----------5, 43
Trade Tax, The Tax is a Tax on Property, and as such void ----------5, 19
Constitutional Provisions, (Appendix, page 76) -------76, 77
Article V, Secs. 3, 6 ----------6, 8, 10, 11
Statutes, Revenue Acts:
Chapter 7, Sec. 50, P. L., 1901 ----------14
Chapter 90, P. L., 1919, Secs. 77, 78 (Appendix, page 78) ---------- 9
Chapter 90, P. L. 1919, Sec. 3 ---------- 9
Chapter 1, P. L. Extra Session 1920, Sec. 2 ------- 9
Chapter 1, P. L. Extra Session 1920, Sec. 7-7d (Appendix, page 80) ---------- 9
Chapter 34, P. L. 1921, Sec. 3 (Appendix, page 82)--6, 8
Chapter 34, P. L. 1921, Sec. 82 (6½) ---------4, 5, 10
Authorities:
Bailey v. Fuqua, 24 Miss., 497 ----------18
Bickett v. State Tax Commission, 177 N. C., 433----11
Commonwealth v. Hamilton, 12 Allen, 300 (S. C., 6 Wall., 632) ----------16
Dawson v. Kentucky Distilling Co., 255 U. S., 288--14
Galveston, H. & S. A. R. R. Co., v. Texas, 210 U. S., 217 ---------- 6
Keeney v. New York, 222 U. S., 525 ----------12
Keith v. Lockhart, 171 N. C., 451 ---------- 7
Magoun v. Illinois Trust Co., 170 U. S., 283 -------12
Pingree, Governor v. Auditor General, 120 Mich., 95 18
Postal Tel. Cable Co. v. Adams, 155 U. S., 688----5, 13
Provident Savings Inst. v. Massachusetts, 6 Wall., 611 ----------16

PAGE

Pullen v. Commissioners, 66 N. C., 361 ----------12
Redmond v. Commissioners, 106 N. C., 122---------- 8
Ruling Case Law, Vol. 26, Sec. 19, page 35---------15
St. Louis, S. W. R. R. Co. v. Arkansas, 235 U. S., 350 ----------6, 13
Smith v. Wilkins, 164 N. C, 135----------11
State v. Worth, 116 N. C., 1007 ----------11
Worth v. Railroad, 89 N. C., 301----------7, 15

Trade Tax Directly Burdens Interstate Commerce and therefor void ----------18-38

Statutes, Revenue Acts:

Revenue Act P. L. 1921, Chap. 34:
Sections 79 and 80, Appendix, pages 84 and 85------22
Section 82 (11), Appendix, page 87 ----------27
Sections 82 (17), Appendix, page 87 ----------27

Consolidated Statutes, Sec. 3413 ----------28

Authorities Cited:

Allen v. Pullman Co., 191 U. S., 171 ---------25, 37
Atlantic & Pacific Tel. Co. v. Philadelphia, 190 U. S., 160 ----------20
Askren v. Continental Oil Co., 252 U. S., 444 --------20
A. T. & S. F. R. R. Co. v. O'Connor, 223 U. S., 280--21
California v. Central Pacific R. R., 127 U. S., 7-41--38
Crutcher v. Kentucky, 141 U. S., 47----------27
Galveston, H. & S. A. R. Co., v. Texas, 210 U. S., 217 ----------27
Houston, E. & W. T. R. R. Co. v. U. S., 234 U. S., 342 ----------35
Illinois Central R. R. v. Mississippi R. R. Co., 229 Fed. R., 248 ----------22
International Text Book Co. v. Peterson, 218 U. S., 280 ----------21
Leloup v. Mobile, 127 U. S., 640 ----------19, 24
Ludwig v. Western Union, 216 U. S., 146 ----------31
Maine v. Grand Trunk R. Co., 142 U. S., 217------29

PAGE

Meyers v. Wells Fargo Co., 223 U. S., 298 ---------30
Mobile County v. Kimbal, 102 U. S., 691-695------35
Norfolk & Western R. R. v. Pennsylvania, 136 U. S., 114 ----------27
Osborne v. Florida, 164 U. S., 650 ----------21
Pullman Co. v. Adams, 189 U. S., 420 ----------
Railroad Commission v. Chicago, B. & Q. R., ---- U. S., ------- Decided Feb. 27, 1922----------35
Reid v. R. R., 149 N. C., 423 (S. C., 222 U. S., 424)--37
Railroad v. Brunswick, 72 N. C., 10 ----------36
St. Louis, S. W. R. R. Co. v. Arkansas, 235 U. S., 350 ----------30
Singer Sewing Machine Co. v. Georgia, 233 U. S., 304 ----------25
Texas v. The Eastern Texas Railroad, ------ U. S., ------- Decided March 13, 1922 ----------33
The Daniel Ball, 10 Wall., 557 ----------34
Trade Mark Cases, 100 U. S., 82 ----------27
United States v. Reese, 92 U. S., 214 ----------27
U. S. v. Singer (U. S. Distillers Tax), 15 Wall., 111--29
Western Union Tel. Co. v. Kansas, 216 U. S., 1----21, 27
Williams v. Talledega, 226 U. S., 404----------21, 27
Wilson v. New, 243 U. S., 332 ----------35

Section 82 (6½) of Revenue Act controlled by Sec. 82 (3½) and in conflict with the Fourteenth Amendment to Federal Constitution ----------38, 39

Statutes:

Revenue Act, P. L. 1921, Secs. 82 (3½) and 82 (6½) Appendix, page 86 ----------38
Revenue Act, P. L. Extra Session 1920, Chapter 1, Sections 7 and 7d (Appendix, page 80) ----------39
Revenue Act, P. L. 1919, Chapter 90, Sections 77 and 78, and 82 (9) (Appendix, page 78-79) ----------39

Authorities:

Bethlehem Motor Co., v. Flynt, 256 U. S., 421 ------38

PAGE

Injunction as Proper Relief against Illegal Tax ----------39

Statutes:

Revenue Act, P. L. 1921, Sec. 3 (Appendix, page 82)-40

Revenue Act, P. L. 1921, Sec. 82, (12) (Appendix, page 87) ----------42

Consolidated Statutes, Sec. 7979 (Appendix, page 75)-41

Constitution, Article IV, Sec. 9 ----------39

Authorities Cited:

Burton v. Furman, 115 N. C., 166 ----------40

Dawson v. Sherrod, 154 N. C., 525 ----------40

Davis v. Wakelee, 156 U. S., 680 ----------43

Long v. Watts, 110 S. E. (N. C.), 765 ----------41

Martin v. Worth, 91 N. C., 45 ----------39

Shaffer v. Carter, 252 U. S., 37 ----------43

Smythe v. Ames, 169 U. S., 466 ----------42

Union Pacific R. R. v. Weld County, 247 U. S., 282--43

Assessment:

Illegality of ----------45

Ground of Attack, Assignment as Error ----------45

Statement of Facts ----------46, 57

Constitution (See Appendix, page 76 for Text) Article V, Sec. 3 ----------58

Statutes:

Revenue Act, Chapter 34, P. L. 1921 ----------46

Machinery Act 1921, P. L., Chapter 38 ----------38

For Text see Appendix, pages 82 and 88

Section 21 ----------48

Section 22 ----------48

Section 23 ----------48

Section 28 (a) ----------46

Section 28 (g) ----------47

Section 42 ----------50

Sections 49 to 54 ----------50

Section 57 ----------51

Section 43 ----------73

PAGE

Section 61 73
Section 62 53
Section 63 ..... 52, 53
Section 64 ..... 52, 53
Section 65 ..... 52, 59
Consolidated Statutes, Sec. 7979 73

ARGUMENT.

Authorities Cited:

Atlantic & N. C. R. R. v. New Bern, 147 N. C., 165..58
Branson v. Bush, 251 U. S., 182 61
Cleveland, C. C. & St. L. R. Co. v. Backus, 154 U. S., 421 61
Columbus Southern R. R. v. Wright, 151 U. S., 470..60
Cummins v. Merchants Natl. Bank, 101 U. S., 153..58
Commissioners v. Tobacco Co., 116 N. C., 441 69
Guano Co. v. New Bern, 172 N. C., 258 ..... 58, 73
Keith v. Lockhart, 171 N. C., 451 72
Kyle v. Commissioners, 75 N. C., 445 58
Louisville & Nashville R. R. Co. v. Greene, 244 U. S., 522 57
People v. Clapp, 152 N. Y., 400 (46 N. E., 842)..... 63
Puitt v. Commissioners, 94 N. C., 709 58
Pullen v. Commissioners, 152 N. C., 548 69
People of the State of California v. San Pablo & Tulare R. Co., 149 U. S., 308 74
Raymond v. Chicago Union T. Co., 207 U. S., 20 58
Redmond v. Commissioners, 106 N. C., 122 ..... 58, 67
Singer Mfg. Co. v. Wright, 141 U. S., 696 74
State v. Central Pacific Co., 10 Nev., 47 63
Wallace v. Hines, 253 U. S., 66 65
Worth v. R. R., 89 N. C., 301 58
Wilmington, C. & A. R. R. Co. v. Brunswick, 72 N. C., 10 59

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 383

NORFOLK SOUTHERN RAILROAD COMPANY,
Appellant

vs.

A. D. WATTS, and A. D. WATTS, as Commissioner of Revenue of the State of North Carolina, et als,
Defendants.

BRIEF FILED ON BEHALF OF APPELLANT

This is an appeal under Section 266 of the Judicial Code, from an order of the United States District Court, for the Eastern District of North Carolina, denying a motion for an interlocutory injunction *pendente lite.*

STATEMENT OF CASE

Appellant, plaintiff below, a Virginia corporation, operating a system of railroad situate in Virginia and North Carolina, filed its bill in the United States District Court, for the Eastern District of North Carolina, against A. D. Watts, individually and as Commissioner of the State of North Carolina, (who under the laws of the State is charged with the duty of assessing for taxation the property of railroad companies;) the State officers and tax collectors of the several political subdivisions of the State, charged with the duty of collecting taxes, seeking

to have declared illegal and void, and to enjoin the collection of:

(A) A tax of one tenth of one per cent of the value of plaintiff's entire property (as assessed for ad valorem taxation), levied for support of the State, under the provisions of Section 82 (6½) of the Revenue Act of 1921, called a trade tax, upon the ground:

1. That this tax is in truth and in fact a tax upon property and void under the State Constitution, as violating the Uniformity Clause thereof, and being twice the amount which can be levied upon property for support of the State government.

2. If the tax be a trade tax, it is assessed and levied for the privilege of carrying on interstate commerce, and therefore, in conflict with the commerce clause of the Federal Constitution.

3. If the tax be a trade tax, it is controlled by Section 82 (3½) of the Revenue Act of 1921, and so controlled, violates the 14th Amendment to the Federal Constitution.

(B) An assessment made by the Commissioner of Revenue of plaintiff's property in the State, for the purpose of ad valorem taxation, for the support of the political subdivisions of the State, and as a measure of the so called trade tax, upon the ground:

1. That the assessment as made was not made in accordance with the laws of the State; and,

2. Under the laws of the State, and the practice of the assessing officers, the property of plaintiff, and other railroad corporations, is valued for taxation in violation of the uniformity clause of both State and Federal Constitutions, when compared with the valuation of the property of other tax payers.

3. The State Tax Commission has imported values in the State in violation of the 14th Amendment to the Federal Constitution. Plaintiff prayed for an injunction against the collection of the trades tax, and against the use of the illegal assessment as a measure of the ad valorem taxes, and for an interlocutory injunction pending final hearing.

The motion for interlocutory injunction was denied and plaintiff appealed.

Three questions arise on the record:

1. The validity of the so called trade tax.
2. The validity of the assessment of plaintiff's property.
3. Plaintiff's right to injunctive relief.

The Constitution of the State, and the State statutes, so far as material, will be set out in full in an appendix hereto.

The Revenue and Machinery Acts vest certain powers in the State Tax Commission. By virtue of Chapter 40, Public Laws 1921, these duties were, on and after May 1, 1921, to be performed by the Commissioner of Revenue.

This brief will be divided into two parts, the first relating solely to the validity of the so called trade tax, the other to the assessment. The facts as to each branch of the case will be stated separately.

PART I

TRADE TAX

STATEMENT OF FACTS

Plaintiff, a Virginia corporation, operates a line of railroad located in the states of North Carolina and Virginia, over which it conducts the business of a common carrier of goods and passengers in both interstate and intrastate commerce.

Plaintiff, in addition to its said lines of railroad, owns either the fee or a leasehold interest in a large amount of other property. See p. r. page 75.

Plaintiff's entire property in North Carolina was, for the year 1921, assessed by the Commissioner of Revenue, for ad valorem taxation at $22,840,932.00.

The Commissioner of Revenue certified this valuation to the State Auditor, in order that he might assess against plaintiff for the support of the State government and also certify to the State Treasurer for collection the tax authorized by Section 82 (6½), of the Revenue Act of 1921.

The State Auditor certified to the State Treasurer a tax of

$22,840.92 as being due from plaintiff under said Section 82 (6½), and notified plaintiff that unless this tax was paid by September 15, 1921 the pains and penalties authorized by law would be inflicted.

See bill, sec. 28 p. r. page 14 and sec. 28 of answer, page 42, p. r.

Section 82 (6½) of the Revenue Act provides:

"*Railroads.* Every railroad company doing business in this State shall annually on or before the thirtieth day of July make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for *ad valorem* taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth per cent (0.1 per cent) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city or town shall be allowed to collect any taxes under this section."

It was admitted that plaintiff was engaged in conducting and carrying on over its line of railroad the business of a common carrier of goods and passengers in interstate commerce.

See sec. 25 of bill and answer, pages 12 and 13 and 41 of p. r.

Defendant alleged that the tax was one laid for the privilege of doing intrastate business alone.

See answer, sec. 28, p. r. page 42.

It was admitted that this tax was levied for the support of the State government, that no tax was levied or assessed against property of any other tax payers for the support of the State government. The statutes so provide.

Plaintiff assigned as error and as grounds of appeal, the error of the Court:

1. In failing to hold that this tax was in truth and in fact a property tax and as such in violation of the Constitution of the State, Article V, Sec. 3 and 6.

2. In failing to hold that this tax, if a trade tax, was a tax levied for the privilege of carrying on interstate commerce, and as such burdened interstate commerce in violation of Article 1, Sec. 8, clause 3 of the Federal Constitution.

3. In failing to hold that Sec. 82 (3½) applied to and controlled Sec. 82 (6½), and as such brought the statute in conflict with the 14th Amendment of the Federal Constitution.

4. In failing to hold that the plaintiff, upon the pleadings and facts, was entitled to injunctive relief.

See assignments of error 10 to 20 inclusive, pages 103, 104 p. r.

ARGUMENT

THE TAX IN QUESTION IS A PROPERTY TAX AND AS SUCH VOID UNDER THE STATE CONSTITUTION.

"The substance, not the shadow, determines the validity of the exercise of the power," (of taxation.)

Postal Tel. Cable Co. v. Adams, 155 U. C., 688, 698.

"We must regard the substance, rather than the form, and

the controlling test is to be found in the operation and effect of the law."

St. Louis S. W. R. Co. v. Arkansas, 235 U. S., 350, 362.

"Neither the state courts nor the legislature, by giving the tax a particular name, or by the use of some form of words can take away our duty to consider its nature and effect."

Galveston H. & S. A. R. Co. v. Texas, 210 U. S., 217, 227.

If it bears upon property so directly as to amount to a property tax, calling it a trade tax will not save it.

The State Constitution, Article V, Sec. 3, provides:

> "Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, according to its true value in money. . . . The General Assembly may also tax trades, professions, franchises and incomes. . . ."

Section 6 limits the property tax for State purposes to five cents on the hundred dollars.

For full text of Constitution, appendix, page 76.

It cannot be denied that if this tax be in truth and in fact a tax upon property, then it is void, for it is a tax imposed for the support of the State, (Sec. 3, Revenue Act, appendix, page 82) and is not imposed upon all property in the State by a uniform rule, which is necessary under the Constitution.

Speaking of this question in Kyle v. Mayor of Fayetteville, 75 N. C., at page 447, Bynum, J., said:

> "'It is the provision and purpose of the Constitution that thereafter there should be no discrimination in taxation in favor of any class, person or interest, but that everything real or personal possessing value as property and the subject of ownership, shall be taxed equally and by uniform rule.' A statement fully approved in Puitt v. Commissioners, 94 N. C,. 709 and many other cases. A law, therefore, cannot exempt the property of individuals of a county,

township, etc., while imposing a tax on property of same kind belonging to corporations, and the statute authorizing such a tax cannot be enforced."

Keith v. Lockhart, 171 N. C., 451, 457.

"The provisions in our State Constitution with regard to equality and uniformity were copied from the Constitution of Ohio, and in that State it has been held that: 'Taxing is required by a uniform rule, that is by one and the same unvarying standard. Taxing by a uniform rule requires uniformity in the mode of assessment upon the taxable valution. Uniformity in taxation implies uniformity in burdens of taxation, and the equality of burdens cannot exist without uniformity in the mode of assessment as well as the rate of taxation. Bank of Columbus v. Hines, 3 Ohio S. Rep.'"

Worth v. Railroad, 89 N. C., 301-309.

"Under the construction of the Constitution, as declared in Pullen's case, it would be in the discretion of the Legislature to unequally distribute the burden necessarily incident to government, and the worst species of class legislation would be tolerated. It would (says Dixon, C. J., in Knowlton v. Supervisors, 9 Wis., 422) "make the Constitution operative only to the extent of prohibiting the Legislature from discrimination in favor of particular individuals, and would reduce the people, while considering so grave and important a proposition, to the ridiculous attitude of saying to the Legislature, 'You shall not discriminate between single individuals or corporations, but you may divide the citizens up into different classes as . . . owners of different species or descriptions of property, and legislate for one class and against another as much as you please, provided you serve all of the favored or unfavored classes alike,' thus affording direct and solemn constitutional sanction to a system of taxation so manifestly and grossly unjust that

it will not find an apologist anywhere—at least outside of those who are the recipients of its favors."

"Such a construction, in our opinion, not only offends the true spirit of the Constitution, but has been distinctly and solemnly repudiated by the uniform decisions of this Court in subsequent cases. These cases decide that when the taxing power is exercisel for a public purpose, the Constitution, and not the Legislature, declares what property shall be taxed, and that it requires that all shall be taxed and by a uniform rule and ad valorem. This construction is conceded, as to State and county taxation, under section 3, Art 5, and we are unable to conceive why the same rule should not apply to section 9, article 7, as the language of the latter is even more imperative than that of the former."

Redmond v. Commissioners, 106 N. C., 122, 127, 128.

Therefore, if this tax be a tax on property, it is void, for the statute seeks to do that, which the highest court of the State says may not be done under the Constitution, that is first provide that no tax shall be levied against property for support of the State, (sec. 3, Rev. Act, 1921, appendix, page 82) then for support of the State levy a tax of one tenth of one per cent upon the true and actual value of the entire property, tangible and intangible as assessed for ad valorem taxation, of all railroad corporations in the State.

From the adoption of the present Constitution in 1868 to 1920, the legislature has at each biennial session, in obedience to the mandate of the Constitution, levied against property a tax substantially in the following form:

"There shall be levied and collected annually an ad valorem tax of eleven and two-thirds cents for State purposes, four cents for pensions and thirty-two cents for public schools, making forty-seven and two-thirds cents on every one hundred dollars value of real and personal property in this State required to be listed in 'An act to provide for the assessment of property and collection of taxes,' sub-

ject to exemption made by law." (Sec. 3, Chapter 90, P. L. 1919.)

For many years all property in North Carolina has been required to be listed annually, personal property appraised each year, real estate, including railroad property, appraised quadrennially.

In 1919 the legislature provided an elaborate organization for the appraisement of all property in the State; the State Tax Commission was given final authority as appraisors, except that this appraisement was not to become effective until adopted by the legislature.

At a special session of the legislature held in August, 1920, the State Tax Commission made its report, showing that the valuation of real estate had been increased from $506,808,394.00 to $2,006,124,977.00 or nearly 300 per cent, and railroad property from $125,417,618.00 to $250,587,158.00 or 100 per cent. (Appendix to answer p. r. p. 45-51 and statement as to railroad p. r. p. 81.)

For more than 20 years prior to August 1920, the legislature had imposed a trade tax upon railroads based on the number of miles operated and at a rate per mile based on gross earnings.

Rev. Act 1919, Sec. 77 and 78, appendix, page 78.

The legislature, at the special session in August, 1920, by Chapter 1 of the Public Laws, adopted the appraisement as made and reported to it; by section 2 thereof provided, "There shall be levied and collected for the year one thousand nine hundred twenty, for the benefit of the State public school fund an ad valorem tax of thirteen cents on every one hundred dollars value of real and personal property in this State required to be listed by the revenue laws of the State."

Thus reducing the State tax on property from the 47⅔ cents upon the one hundred dollars levied in 1919 to 13 cents for 1920.

Section 7 of the same statute first provided:

"That for the purpose of providing additional revenue for the State in lieu of ad valorem tax on property heretofore levied by the State, the following taxes shall be levied and collected in the manner now provided by law for collection of similar taxes."

Section 7, (appendix, page 80), repealed the trade tax on railroads based on number of miles, which had been in force for twenty years or therebouts, and in lieu thereof enacted section 82 (6½), supra.

At the 1920 election, the Constitution of the State was by popular vote amended so that the tax on property for State and county purposes combined (except certain special taxes) was limited to 15 cents on the one hundred dollars, and the State tax to five of this fifteen, and authorizing the taxation of incomes though derived from property taxed.

In 1921 the legislature declined to levy any tax against property for support of the State, but continued in effect section 82 (6½) as to railroads.

As will be seen, the practical effect and operation of this legislation was for 1920 to reduce the ad valorem tax of all tax payers except railroad corporations, for State and State school purposes from forty seven and two third cents to thirteen cents, and of railroad corporations to twenty three cents, and for 1921 and subsequent years to relieve all tax payers except railroad corporations from all taxes on property for State purposes and to impose a tax on railroads of ten cents on the one hundred dollars, or one tenth of one per cent on the "true and actual value of their entire property, tangible and intangible as assessed for ad valorem taxation."

This is all accomplished, if legal, by the simple expedient of calling the tax a trade tax.

It is settled law in North Carolina that "the term 'trades' in Art. V, Sec. 3, includes any employment or business embarked in for gain or profit" and that "when the word 'trades' is used in defining the power to tax, the broadest signification is given to it."

Bickett v. State Tax Commission, 177 N. C., 433, 435.
Smith v. Wilkins, 164 N. C., 135-148.
State v. Worth, 116 N. C., 1007-1011.

Bickett's case, supra says:

"It is settled that a license tax is uniform when it is equal upon all persons belonging to the described class upon which it is imposed."

And again:

"It is within the legislative power to define the different classes and to fix the license tax required of each class. All he can demand is that he shall not be taxed at a different rate from others in the same occupation, as classified by legislative enactment." (page 436.)

Therefore, if it be lawful under the State Constitution to measure a trade tax by a given per cent of the "true and actual" value of the entire amount of property owned by a tax payer as assessed for ad valorem taxation, the most unjust system of taxation is legal, under a Constitution, the very spirit of which is, as declared by the Supreme Court of the State in Redmond v. Commissioners, 106 N. C., 122, 126, fairness and equality, for as the Court there said: "No one who reads these (Art. V, Sec. 3) and other provisions of the Constitution will fail to be impressed with the earnest effort to engraft upon our organic law the great principle of equality of taxation."

If this tax be valid, a scheme of taxation can be devised by which lawyers may be taxed one per cent, doctors two per cent, grocery merchants three per cent, cotton farmers four per cent, tobacco farmers five per cent, tobacco manufacturers six per cent, etc. of the true and actual value of their entire property in the State, for every business is a trade and may be taxed at any rate, at the will of the legislature.

The defendants, in their answer, contend that this is a tax upon the trade of carrying on intrastate commerce, admitted that it is measured by a given per cent of the true value and

actual values of plaintiff's entire property, tangible and intangible as assessed for ad valorem taxation, and contend that this is a valid tax.

In the Court below, they cited and relied on Maggoun v. Illinois Trust Bank, 170 U. S., 283 and Keeney v. New York, 222 U. S. 525, and numerous other cases sustaining the principles decided in those two cases.

Those cases involved the validity of inheritance, transfer or succession taxes.

Defendant's counsel either overlooked or ignored the decision of the highest court of the State of North Carolina, in Pullen v. Commissioners, 66 N. C., 361, 364, where it was expressly held that an inheritance, succession or transfer tax was neither a tax upon property nor a tax upon trades, professions, franchises or incomes, as those terms are used in the State Constitution. They overlooked what this Court says in the Magoun case, to wit:

> "1. An inheritance tax is not one on property, but one on succession. 2. The right to take property by devise or descent is the creature of the law, and not a natural right, a privilege, and therefore the authority which confers it may impose conditions upon its use."

The case at bar deals with a tax on a trade or business under Article V, Section 3 of the State Constitution.

Defendants, in the court below, cited St. Louis, S. W. Ry. Co. v. Arkansas, 235 U. S., 350, 371, where the court upheld a statute which imposed an annual tax of one-twentieth of one per cent *upon the proportion of capital stock of the corporation represented by property owned and used in business transacted in the State as* license tax for the privilege of doing business.

The statute was attacked upon the ground that it was a regulation of and burden on interstate commerce. The Court said:

> "The act in question seems to have been drawn with great care and with the evident purpose to exclude any contention

that the tax was made upon interstate commerce . . . We therefore accept the construction of act No. 113 that we have quoted from the opinion of the State court, which is, in short, that it impose an annual franchise tax upon the right to exist as a corporation or to exercise corporate powers within the State, the amount of the tax being fixed solely by reference to the property of the corporation that is within the State and used in business transacted within the State, and excluding any imposition upon or interference with interstate commerce. . . . And we proceed to consider whether, in view of the construction thus placed upon act No. 112, the franchise tax imposed upon plaintiff in error pursuant to its terms runs counter to the commerce clause or the 14th Amendment." (p. 262, 263).

And on page 364 quoted the following from the opinion of Mr. Chief Justice Fuller in Postal Tel. Cable Co. v. Adams, 155 U. S., 688:

"But property in a State belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, or a tax may be imposed on the corporation on account of its property within a state, and may take the form of a tax for the privilege of exercising its privilege within the state, if the ascertainment of the amount is made dependent in fact on the value of its property situated within the State, (THE EXACTION, THEREFORE, NOT BEING SUSCEPTIBLE OF EXCEEDING THE SUM WHICH MIGHT BE LEVIABLE DIRECTLY THEREON)" (Capitals supplied.)

That is if the tax be in truth and in fact a tax upon property, calling it a trade or license tax will not make it unlawful because as a property tax it is subject to all the limitations of taxes on other property.

In the case at bar, the tax is in truth and fact a property tax, and as such void under the constitution. The defendants seek to evade the Constitution by calling it a trade tax.

Looking at the substance, not the shadow, as the Court said, this cannot be done.

In the case at bar, as in the case of Dawson v. Kentucky Distilling Company, 255 U. S., 288-298, the statute in question has not been passed on by the State courts. In the case at bar it can never be, because the statute has been amended and if the injunction be denied, the tax will be collected and no suit can be brought to recover it back.

In the Dawson case, supra, the Court says:

> "But the validity of the statute does not appear to have been passed upon by any Kentucky Court. We are, therefore, called upon, as were the District Courts, to determine this question of State law. The name by which the tax is described in the statute is, of course, immaterial. Its character must be determined by its incidents."

The incidents of the tax are:

1. It is ad valorem, that is, it is measured by the amount of property owned by the tax payer.

2. The amount of the tax is dependent upon an appraisal by assessors of the value of the property of the tax payer.

3. It is payable to the State Treasurer, just as all taxes paid by railroad companies, for the support of the State have been paid for twenty years past, whether called trade or property taxes (see Sec. 50, Chapt. 7, Public Laws, 1901), which as to this provides:

> "All taxes due the State from any railroad company shall be paid by the treasurer of each company directly to the State Treasurer within thirty days after the 1st day of July of each year."

This provision continued in the law so long as any tax was levied upon property for support of the State.

4. It has no relation to the amount of business done, or the extent to which it uses its trade, the only reference to the nature of the business being to designate who shall pay the tax.

5. It was originally imposed by a statute which declared that it was in lieu of another tax levied for the same purpose, payable to the same state officer, measured exactly in the same way, and upon an appraisal made by the same officers.

Testing the tax at bar by its incidents and applying to these incidents the principles of law laid down for distinguishing the two classes of taxes, we submit that this is a property tax.

The true test or distinction between an excise or trades tax and a property tax is laid down in Ruling Case Law, Vol. 26, Sec. 19, page 35, as follows:

> "An excise and a property tax, when the two approach each other, ordinarily may be distinguished by the respective methods adopted of laying them and fixing their amounts. If a tax is imposed directly by the legislature without assessment, and its sum is measured by the amount of business done or the extent to which the conferred privileges have been enjoyed or exercised by the taxpayer irrespective of the nature or value of the taxpayer's assets, it is regarded as an excise; but if the tax is computed upon a valuation of property, and assessed by assessors either where it is situated or at the owner's domicile, although privileges may be included in the valuation, it is considered a property tax."

This definition is in line with the decisions of the courts:

Worth v. R. R., 89 N. C., 301, 306, where the Court says:

> "Whenever a tax, as here, is imposed upon a corporation directly by the legislature, and is not assessed by assessors, and the amount depends on the amount of business transacted by the corporation, and the extent to which it has exercised the privileges granted in its charter, without reference to the values of its property or the nature of the investments made of it, it is a franchise tax Burrougs Tax, 169. To the same effect is *Attorney General v. Bank of Charlotte,* 4 Jones Eq. 287 (57 N. C.)"

These decisions of the courts of North Carolina are in line with the decisions of this Court, notably the leading case of *Provident Savings Inst. v. Massachusetts,* 6 Wall. 611, where the tax attacked was upon institutions for savings incorporated under the laws of Massachusetts, was three fourths of one per cent per annum on the amount of their deposits. The ground of attack was that it was a tax upon property. At to that, the Court, on pages 631-2 said:

> "Franchise taxes are levied directly by an act of the legislature, and the corporations are required to pay the amount in to the State treasurery. This differs from property taxes, as levied for state and municipal purposes, in the basis prescribed for computing the amount, in the manner of assessment, and in the mode of collection, and they are in lieu of all other taxation, state or municipal. Comparative valuation in assessing property taxes is the basis of computation in ascertaining the amount to be contributed by an individual, but the amount of a franchise tax depends upon the business transacted by the corporation and the extent to which they have exercised the privileges granted in their charter. Unlike as the two systems are in every particular, it seems to be a work of superogation to point out the differences, which are radical and substantial."

Commonwealth v. Hamilton Mfg. Co., 12 Allen (Mass.) 300, (affirmed on writ of error *Hamilton v. Commonwealth,* 6 Wall. 632) C. J. Bigelow, as to a tax assessed against the company upon the market value of its capital stock over and above the value of its real estate, for the Court, said:

> "It certainly can not be contended that the legislature can legitimately impose a tax on property in the name or under the guise of levying an excise or duty. Such legislation would be a palpable evasion of a distinct and clearly defined constitutional restriction, and would substitute an unequal and arbitrary system of taxation upon property for one which was intended by the constitution to be equal

and proportionate. If the practical operation and effect of an assessment authorized by an act of the legislature would be to levy a tax on the property of certain individuals or corporations from which all others were exempt, so as to throw on a particular class a disproportionate share of the burdens of raising money for public purposes, without any equivalent benefit, it would be the duty of the Court to declare it to be an unauthorized act of legislative power, irrespective of the particular form in which the assessment or tax might be imposed. The validity of the act would depend on the substantial nature and operation of its provisions, and not on the formal language in which they were expressed, or on the mode, in which they were to be carried into effect. . . . . Looking at the material provisions of the act by virtue of which the assessment in controversy is imposed in the light of these familiar principles, we cannot say that a reasonable construction of them necessarily leads to the conclusion that the assessment is in fact a tax on the property of the corporations therein designated, and not an excise or duty laid on the respective franchises. It certainly is not in terms imposed on the corporate property, nor do we think it is so in effect or substance. The statute does not require that there should be any return made of the personal property held by the corporation to the board of commissioners, who are to fix the amount on which the assessment is to be reckoned, nor is there any valuation or estimate of such property to be made in order to arrive at the excise or duty. The market value of all the capital stock of each corportion, after deducting the real estate and machinery, if any, belonging to it, is the prescribed basis on which the calculation is to be made, and by which the excise is to be ascertained, on which the assessment is laid. *If the legislature had intended to impose a tax on the property of corporations, exclusive of their real estate, it would have been very easy to ascertain the exact amount liable to such assessment by requiring returns setting forth the nature and*

> *value of all personal estate of which each was possessed. There would have been a pure property tax.*" (Italics supplied.)

In *Bailey v. Fuqua,* 24 Miss., 49s, where a tax was imposed of one-fourth of one per cent on all bank stock subscribed for in any incorporated bank in the state, the court held the tax invalid, saying:

> "The term 'ad valorem tax' is as well defined and fixed as any other used in political economy or legislation, and simply means a tax or duty upon the value of the article or thing subject to taxation. The language used by the legislature in this law should receive the same construction as if it had declared that 'there shall be assessed and collected within this State a tax of one-fourth of one per cent on the value of all bank stock subscribed for in any incorporated bank, etc.' Had this language been used no doubt would have arised in the mind of anyone."

This was the exact language used in the case at bar.

In *Pingree, Governor v. Auditor General,* 120 Mich., 95, the statute authorized certain state officers to assess telegraph and telephone lines in the state at their true cash value, and levy a tax upon such assessment at a rate equal to the average rate of taxes (general, municipal and local) levied throughout the state for that year. The tax was paid. The auditor treated it as an exise or franchise tax, and credited it to the school fund. The Governor brought mandamus to have the tax credited to the general fund where property taxes belonged. A suit was brought by a telephone company to have the tax declared illegal as violating the uniformity clause of the State constitution. The court held it to be a property tax and as such void.

We respectfully submit that the tax is one on property and as such void under the State Constitution.

IF THE TAX BE A TAX LEVIED FOR THE PRIVILEGE OF CARRYING ON THE TRADE OR BUSINESS

OF OPERATING A RAILROAD, THEN IT IS A TAX AND DIRECT BURDEN UPON INTERSTATE COMMERCE AND AS SUCH VOID AS IN CONFLICT WITH ARTICLE I, SEC. 8, CLAUSE 3 OF THE FEDERAL CONSTITUTION.

It is as well settled as any proposition of law can be, that under the Federal Constitution a State may not impose a tax for the privilege of carrying on the trade or business of an interstate carier or interstate commerce.

Leloup v. Mobile, 127 U. S., 640, 648, Mr. Justice Bradley, for the Court, says:

> "In our opinion such a construction of the Constitution leads to the conclusion that no State has the right to lay a tax on interstate commerce in any form whether by way of duties laid on transportation of the subjects of that commerce or on the receipts derived from that transporation, or on the occupation or business of carrying it on, and the reason is that such a tax is a burden on that commerce, and amounts to a regulation of it, which belongs to Congress. This is a result of so many recent cases that citation is hardly necessary. As a matter of convenient reference we give the following list:
>
> Case of State Freight Tax, 82 U. S., (15 Wall.) 232;
> Pensacola Tel. Co. v. W. U. Tel. Co., 96 U. S., 1;
> Mobile County v. Kimbal, 102 U. S., 691;
> W. U. Tel. Co. v. Texas, 105 U. S., 460;
> Moran v. New Orleans, 112 U. S., 69;
> Gloucester Ferry Co. v. Pennsylvania, 114 U. S., 196;
> Brown v. Houston, Id. 622;
> Walling v. Michigan, 116 U. S., 446;
> Pickard v. Pullman Southern Car Co., 117 U. S., 34;
> Wabash, St. L. & P. R. R., Co. v. Illinois, 118 U. S., 557;

Robbins v. Shelby County Taxing Dist., 120 U. S., 489;
Philadelphia & S. M. Steamship Co. v. Pennsylvania, 122 U. S., 326;
W. U. Tel. Co. v. Pendleton, Id., 347;
Ratterman v. W. U. Tel. Co., 127 U. S., 411."

So in *Atlantic & Pacific Telegraph Company v. Philadelphia*, 190 U. S., 160, 163, where the Court says:

"The question presented is as to the validity of the charges imposed by the ordinances of the City of Philadelphia upon the defendant (plaintiff in error) a corporation engaged in interstate commerce. Few questions are more important or have been more embarrassing than those arising from the efforts of a State or its municipalities to increase their revenue by exactions from corporations engaged in carrying on interstate commerce. There have been many cases in whose decisions some propositions have been adjudicated so often as to be no longer open to discussion.

First. . . . . The Constitution of the United States having given to Congress the power to regulate commerce not only with foreign nations, but among the several states, that power is necessarily exclusive, whenever the subjects of it are national in their character or admit only of one uniform system or plan of regulation.

Second. No state can compel a party, individual or corporation to pay for the privilege of engaging in interstate commerce."

We omit the numerous decisions cited by the court in support of each proposition.

This rule of law has been reaffirmed many times since.

Askren v. Continental Oil Co., 252 U. S., 444, where a tax of $50 a year for purchasing, shippingg and selling gasoline was held invalid, citing:

Standard Oil Co. v. Graves, 249 U. S., 389;
Western Union Tel. Co. v. Kansas, 216 U. S., 1;
Pullman Company v. Kansas, 216 U. S., 56;
International Text Book Co., v. Petterson, 218 U. S., 664;
A. T. & S. F. R. R., Co. v. O'Connor, 223 U. S., 280;
Williams v. Talledega 226 U. S., 404.

Therefore we submit, the only real question for consideration is: Does the statute impose a tax upon plaintiff for carrying or doing the business of interstate commerce?

The defendants in their answer seem to concur in this view of the law, for they expressly aver that the tax is one imposed, not for the privilege of doing interstate commerce, but for doing intrastate commerce. See p. r. page 42, Sec. 28 of Answer. And in their brief filed in the court below on page 48, we find this statement:

> "Thus, as was shown in *Osborne v. Florida,* (164 U. S., 650), the State cannot require the payment of a privilege or franchise tax as a condition precedent to the right of a carrier to do any kind of business in the State, for such a requirement would, if valid, stop interstate commerce as well as intrastate commerce."

May the court, under the recognized rules for construing statutes, limit the tax, as defendants contend should be done, to the trade of doing intrastate commerce?

We submit not.

The language of the statute, so far as material to this question is:

> "Every railroad company doing business in this State shall annually on or before the thirtieth day of July, make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require for the purpose of carrying out this section. . . . The franchise tax of each such rail-

road company for the privilege of exercising its franchise in this State shall be one-tenth of one per cent of the value so ascertained . . . ."

As a matter of legislative construction of the term "doing business in the State," (and that, without qualification it includes both inter and intrastate commerce, when both are conducted by a common carrier) we refer to Section 79 (a) of the same schedule of the same statute, where the language is:

"Each express company doing business in this State shall pay to the State Treasurer, an annual privilege or license tax, as follows: . . . ."

"Provided further, that nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce, or upon any business transacted for the Federal Government."

For full text see page 84 of appendix.

Again, Section 80 of the same act:

"Each and every person, firm, or corporation operating within this State the apparatus necessary to communication by telegraph shall pay, for the privilege of engaging in such business, to the State an annual license tax of five dollars per mile for each pole mile . . . . Provided that nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce or upon any business transacted for the Federal Government."

For full text, see page 80 of appendix.

When this suit was started, the Legislature, recognizing that under the decisions, and under the legislative intent, a tax had been imposed for the privilege of doing interstate commerce, amended the act so as to make it specifically apply to intrastate commerce alone.

Illinois Central R. Co. v. Mississippi R. R. Co., 229 Fed. Rep., 248, cited by defendant in their printed brief in the court

below to support this tax, well illustrates the situation. There the statute under attack read:

"That Section 3850 of Chapter 114 of the Code of 1906 levying privilege taxes on railroads be and is hereby amended so that for the purpose of levying a privilege tax on railroads, such railroads are divided into five classes . . . And any person, natural or artificial, who shall exercise any of the privileges taxed herein, without first paying the tax and procuring the tax or license, as required by law, shall be subject to the pains and penalties imposed, etc."

The Court, on page 253, said:

"The privilege taxed by the act is the business of operating a railroad. Any person or corporation who exercises this privilege, without first paying the tax and procuring the license, is subjected to the prescribed penalties. There is no restriction as to the character of business taxed to be deducted from the language of the act. The operation of a railroad by any one and for any purpose is inhibited until the tax is paid and the license secured. Any one who exercises the privilege of operating a railroad for any purpose, without first paying the tax and procuring the license, is liable to the penalties prescribed. The language of the act is inclusive enough to prohibit the operation of a railroad engaged in exclusively interstate commerce. The Supreme Court of Mississippi has not as yet construed the act, so as to make its provisions inapplicable to interstate commerce or government business. If its language contained sufficient ambiguity to admit of such a construction, in order that the act might prevail, rather than be destroyed, it should be so construed. The language of the act, however, is general in its terms, contains no exception, and is not ambiguous. This being true, and in the absence of authoritative construction by the Supreme Court of Mississippi, it must be given construction consistent with its language."

That the term "every railroad company doing business in this State" includes all the business done and usually done by railroads, and where the business actually done is both inter and intrastate, includes both classes of business, unless there is something to restrict this general language, would seem to be conclusively settled.

In *Leloup v. Mobile*, 127 U. S., 640, 642, the language of the statute was:

> "Be it ordained by the Mobile Police Board, that the license tax for the year, from the 15th of March, 1883, to the 15th of March, 1884, be and the same is hereby fixed as follows:
>
> "Telegraph Companies $225 . . .
>
> "Be it further ordained that for each and every violation of the aforesaid ordinance, the person convicted thereof shall be fined by the recorder not less than fifty dollars."

The Supreme Court of the State upheld the tax on writ of error; the judgment was reversed, this Court saying:

> "In approaching the question thus presented, it is proper to notice that the license tax in question is purely a tax on the privilege of doing the business in which the telegraph company was engaged. By the laws of Alabama in force at the time this tax was imposed, the telegraph company was required, in addition, to pay taxes to the State, County and Port of Mobile, on its poles, wires, fixtures and other property, at the same rate and to the same extent as other corporations and individuals were required to do."

The tax was held to be a tax on interstate commerce and invalid, and replying to the argument that the company was doing intrastate commerce, and the State had the right to tax that business, the Court, on page 647, said:

> "But it is urged that a portion of the telegraph company's business is internal to the State of Alabama and therefore taxable by the State. But that fact does not

remove the difficulty. The tax affects the whole business without discrimination."

Allen v. Pullman Co., 191 U. S., 171, 179, where the tax was:

> "That the rate of taxation on the following privileges shall be as follows: Sleeping Cars: Each company doing business in the State, on each car, per annum, $500."
>
> Section eight of the act provided:
>
> "That any and all parties, firms or corporations exercising any of the foregoing privileges must pay this tax, as set forth in the act, for the exercise of such privilege, whether they make a business of it or not."

The State Auditor sought to limit the scope of this act to cars running between Nashville and Memphis, and between Memphis and Chattanooga, purely intrastate. The Court said:

> "But this action does not conclude the State in taxing for other years, and the action taken by the comptroller does not limit the terms of the law affecting interstate commerce . . .
>
> "We are not at liberty to read into the statute terms not found therein, or necessarily implied, with a view of limiting the tax to local business, which the Legislature in the terms of the act impose upon the entire business of the company. We are of opinion that taxes enacted under the act of 1887 are void as an attempt by the state to impose a burden upon interstate commerce."

The principle of construction contended for by the plaintiff is well illustrated in the case of *Singer Sewing Machine Co. v. Georgia*, 233 U. S., 304-318. The statute provided:

> "Sewing Machines—Each person, firm or corporation selling or delivering sewing machines, either in person or through agents, shall pay $50.00 annually for each county in which they may sell or deliver said articles."

Plaintiff had established regular places of business in thirty-six counties in the State of Georgia; in all but one, Russell County, plaintiff was conducting a purely intrastate business; in Russell County plaintiff was carrying on both inter and intrastate commerce. Plaintiff sought to enjoin the collection of the tax in all thirty-six counties. The District Court denied the injunction as to all the counties but Russell, where the business was both inter and intrastate, and granted the injunction in that county upon the ground that the tax burdened interstate commerce. This Court, affirming the judgment, said:

> "With respect to business conducted in Russell County, the decree of the District Court is not now directly under review, but at any rate it was clearly correct under *Crenshaw v. Arkansas*, 227 U. S., 389. With respect to the other counties, the correctness of the decision, so far as the commerce clause is concerned, seems to us equally clear under *Emert v. Missouri*, 156 U. S., 296."

In that case, where the same corporation was conducting the same kind of business to two or more places, at one place the business being purely local or intrastate, the statute was held valid; at another place the business being both inter and intrastate, the statute was held as to the business done in that place invalid the court holding that the statute applied to the business as it was actually carried on, and further holding that if the business as actually carried on consisted of both intra and interstate commerce, the language being broad enough to cover both, the court was without power to separate the two.

The court cited *United States v. Reese*, 92 U. S., 214, 221, holding a penal statute void, which was couched in language broad enough to cover wrongful acts without, as well as within the constitutional inhibition, upon the ground, that the court could not reject the unconstitutional part and retain the constitutional; also *Trade Mark Cases*, 100 U. S., 82, 99 and *Lehoup v. Mobile*, 127 U. S., 640.

The court also cited *Norfolk & Western R. Co. v. Pennsylvania*, 136 U. S., 114, 119; *Crutcher v. Kentucky*, 141 U. S., 47, 62; *Galveston H. & S. A. R. Co. v. Texas*, 210 U. S., 217; *Western Union Tel. Co. v. Kansas*, 216 U. S., 1; *Williams v. Talladega*, 226 U. S., 404, 419, saying:

> "There was a state license tax that operated without exemption or distinction upon the privilege of carrying on a business, a part of which was that of an essential governmental agency, constituted under the laws of the United States. It was held that the tax necessarily included within its operation this part of the business and since this was unconstitutional, the whole was void."

It is therefore respectfully submitted that the language of the act is broad enough to and does cover the entire business of operating a railroad in the State, a large part of which is interstate commerce, and the court is not at liberty to reject the interstate part and apply the tax solely to the intrastate part of the business.

THE STATUTE MAKES THE PAYMENT OF THE TAX AND OBTAINING THE LICENSE A CONDITION PRECEDENT TO DOING NOT ONLY INTRASTATE BUSINESS, BUT INTERSTATE BUSINESS.

Section 82 (11) of the Revenue Act, provides:

> "Upon the payment of the tax or fee provided for in this act to the Treasurer of State, the Treasurer of State shall make out and deliver to the public utility or corporation so paying a receipt for the payment by such utility or corporation of the tax or fee herein provided for."

Section 82 (17) of the Revenue Act, provides:

> "If a corporation, wherever organized, required by the provisions of this act to file any report or return or to pay any tax or fee, either as a public utility or as a corporation, organized under the laws of this State, or as a foreign corporation for profit doing business in this

State and owning and using a part or all of its capital or plant in this State, or as a sleeping-car, freight line, or equipment company, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this act for making such report or return or for paying such tax or fee, the Commission shall certify such fact to the Secretary of State. The Secretary of State shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this State by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of any such foreign corporation to do business in this State, by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The Secretary of State shall immediately notify such domestic or foreign corporation of the action taken by him."

Under this section it is clear that the payment of the tax is made a condition precedent to the right of the corporation to do any business.

That a railroad company may not be established or operate in the State without first obtaining authority so to do is beyond question.

Consolidated Statutes, Sec. 3413, provides:

"If any person or corporation, not being expressly authorized thereto, shall make or establish any canal, turnpike, tramroad, railroad or plankroad, with the intent that the same shall be used to transport passengers other than such persons, or the members of such corporation, or to transport any productions, fabrics or manufactures other than their own, the person or corporation so offending, and using the same for any such purpose, shall forfeit and pay fifty dollars for every person and article of produce so transported.

"This section shall not apply to any narrow-gauge rail-

road, tramroad or toll road made and established and maintained solely by the owner of the lands upon which said road may be, the principal business of which is the transportation of logs, lumber and articles for the owners of such railroad or tramroad: Provided, that the corporation commission shall have power to authorize lumber companies having logging roads, to transport all kinds of commodities other than their own and passengers and to charge therefor reasonable rates to be approved by said commission."

So that the statutes of the State, in order that a railroad may be constructed or operated, require:

(1) Authority to construct and operate, and imposes pains and penalties for failure to obtain such authority.

(2) For operating or doing business, an annual tax of one-tenth of one per cent of the ad valorem value of its entire property in the State.

(3) Which is exacted as a license tax for carrying on the trade of operating a railroad, and

(4) If the tax be not paid the authority which has been granted is cancelled and annulled.

Plaintiff is engaged in both inter and intrastate commerce.

Under the decisions above cited, we submit that the statute imposes a tax, which as a trade tax directly burdens interstate commerce, and as such is void, under the commerce clause of the Federal Constitution.

The defendants, in the court below, contended that the court was at liberty to limit the words of the statute to a license for doing intrastate business alone, and cited and relied upon:

U. S. v. Singer, 15 Wall., 111 (United States Distillers Tax).

Maine v. Grand Trunk Railway Company, 142 U. S., 217.

That case was decided upon the idea that the tax levied, in lieu of all other taxes, was valid as a property tax, as it

amounted to no more than a fair tax upon property, the court holding that it would disregard the name given the tax (the shadow) and look at the substance.

As to this case, in *Meyers v. Wells Fargo Co.*, 223 U. S., 298, 302, Mr. Justice Holmes, for the court, said:

> "The tax is 'in addition to the taxes levied and collected upon an ad valorem basis.' . . .
>
> "Therefore this tax cannot be an attempt to reach the value of what is by the law to be valued and taxed in a different way. It would be difficult to apply to a tax levied in these days the explanation of *Maine v. Grand Trunk R. Co.*, 142 U. S., 217, given in *Galveston, H. & S. A. R. Co. v. Texas*, 210 U. S., 217, 226; *Flint v. Stone Tracy Co.*, 220 U. S., 107, 162-165, and to suppose it intended to reach only the additional value given by its being part of a going concern to property already taxed in its separate items."

As a property tax, as shown, the statute is in conflict with the State Constitution.

Osborne v. Florida, 164 U. S., 650, where the State court had construed the State Statute and held that it did not apply to interstate commerce, but was limited solely to a tax upon intrastate commerce.

Defendant relied principally in the court below on *St. Louis, Southwestern R. R. Co. v. Arkansas*, 235 U. S., 350. In that case the State court had held that the statute related solely to intrastate business, using this language:

> "The act in question seems to have been drawn with great care and with the evident purpose to exclude any contention that the tax was made upon interstate commerce. The framers of the act evidently considered the cases of *Ludwig v. Western Union Tel. Co.*, 216 U. S., 146, and *Western Union Tel. Co. v. Kansas*, 216 U. S., 1, and therefore intended to pass an act that would not be contrary to the principles therein announced."

Which was quoted by this Court, see page 362, this Court said:

> "Upon the mere question of construction, we are of course concluded by the decisions of the State Court of last resort."

Therefore, it is apparent that the tax there was as much limited to the domestic commerce of the State, as if the statute so declared.

The Statute under consideration in that case contained the following provision:

> "In case any corporation shall fail to pay the franchise tax prescribed by this Act when it becomes due during the terms of said certificate, the said tax commission shall cancel said certificate, and said corporation shall forfeit its right to do business in this State, in addition to the other penalties prescribed in the act."

This Court held that if this language, needs must be construed, to mean that if the tax was not paid, the right to do interstate business was cancelled, then the whole statute would be void, as a burden upon interstate commerce. (P. 368 of opinion.) But in view of the construction given to the statute by he State court, that it only applied to intrastate commerce, this court would not assume that the State court would hold, that the right to do inerstate business was forfeited, for failure to pay a license tax to do intrastate commerce. P. 369 of opinion).

An examination of the two cases cited by the Supreme Court of Arkansas, as setting out the principles of law which the Legislature intended to be avoided in passing the statute under consideration in the *St. Louis, Southwestern R. R. Co., case, supra,* shows:

In *Ludwig v. Western Union,* 216 U. S., 146, that the language of the statute in that case, as here, was:

> Sec. 1 "Every company or corporation incorporated under the laws of any other state, etc. . . . *now or*

hereafter doing business in this State, shall file in the office of the Secretary of State a copy of its charter, etc.

Sec. 2. "Any foreign corporation *which shall fail to comply with the provisions of this act,* and shall do *any* business in this State, shall be subject to a fine of not less than $1,000.00, . . . and as an additional penalty any foreign state corporation which shall fail or refuse to file its articles of incorporation or certificate as aforesaid, cannot make *any contract in this State which can be enforced by it either in law or in equity.*

Sec. 3. "That all corporations hereafter incorporated in this State, *and all foreign corporations seeking to do business in this State,* shall pay into the treasury of the State *for the filing of said articles,* a fee of $25.00 where the capital stock is $50,000 or under." (Italics court's.)

In *Western Union Tel. Co. v. Kansas,* 216 U. S., 1, the court, as to the statute under consideration, said:

"Under those statutes a State Charter Board was organized and its powers defined. That Board was authorized to receive applications from corporations of other states, territories or countries, seeking permission to engage in business as foreign corporations in Kansas."

Then the court sets out the details of the legislation and says:

"Then comes these important sections:

"Each corporaation which has received authority from the Charter Board to organize, shall, before filing its charter with the Secretary of State, as provided by law, pay to the State Treasurer of Kansas *for the benefit of the permanent school fund* a charter fee of *one-tenth of one per cent of its authorized capital* upon the first $100,000 *of its capital stock or any part thereof,* etc. . . . All the provisions of this act, including the payment of fees herein provided shall apply to *foreign* corporations seeking to do business in this State . . ."

By another section corporations operated for profit except banks, insurance and railroad corporations were required to file reports showing certain facts required by the statute, and

> "Such failure to file such statements by any corporation doing business in this State, and *not organized under the laws of this State,* shall work a forfeiture of its right or authority to do business in this State, and the charter board may at any time declare such forfeiture and shall forthwith publish such declaration in the official state papers." (Italics court's).

In both of those cases the statute in question had been held void, as a burden upon interstate commerce, and the contention was made in both, that the statute applied only to local business. This court did not take that view of the statute.

Comparing the statute in those two cases, to the statute at bar, we find in the case at bar, that no railroad company may transport any passengers or commodities in the State, without first obtaining authority to so do, under pain of $50.00 for each passsenger or article transported. Consolidated Statutes, Sec. 3413. That unless, every railroad company doing business in the State, shall pay an annual license tax of one-tenth of one per cent of the value of its entire property in the State, the Secretary of State is required, or authorized to cancel its charter and revoke its authority to do business. Revenue Act, Sec. 82 (6½) and (17). Just exactly the same condition as existed in the two cases, which the Supreme Court of Arkansas held, that the statute in the *St. Louis, Southwestern case,* had been carefully drawn to avoid.

It will be clearly seen that the *St. Louis, Southwestern case* is not an authority against plaintiff in this case.

THE TRANSPORTATION ACT OF 1920, AMENDING THE INTERSTATE COMMERCE ACT, MATERIALLY CHANGED THE STATUS OF INTERSTATE CARRIERS.

The Interstate Commerce Act, Sec. 1 (18) as amended by the Transportation Act of 1920, provides:

> "No carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment"

This part of the act was considered by this court in *Texas v. The Eastern Texas Railroad Co.*, 42 S. C. Rep., 281. Decided March 13, 1922.

The Eastern Texas Railroad Company, a Texas corporation, owned a line of railroad in that State, 30.3 miles, originally constructed as a lumber road, not owning or operating any other railroad; the corporation made application under the act for leave to abandon, which was granted. The State of Texas brought suit to enjoin the abandonment of the operation of the road in intrastate commerce. This court said:

> "If paragraphs 18, 19 and 20 be construed as authorizing the Commission to deal with the abandonment of such a road as to intrastate as well as interstate and foreign commerce, a serious question of their validity will be unavoidable. If they be given a more restricted construction their validity will be undoubted."

The court then holds that following the settled construction of the Interstate Commerce Act, that the act as a whole, including the amendments, only applies to intrastate commerce as it affects interstate commerce and says:

> "These considerations persuade us that the paragraphs in question should be interpreted to read as not clothing the Commission with authority over the discontinuance of the purely intrastate business of a road whose situation and ownership, as here, are such that interstate and foreign commerce will not be burdened or affected by a continuance of that business."

Here we present the other side, may an interstate carrier

abandon its intrastate business without a certificate of convenience from the Commission.

We submit that the power and authority of Congress to require a common carrier by railroad, engaged in interstate commerce, to also conduct and carry on intrastate commerce, cannot well be denied under the decisions.

Congress is empowered, in order to regulate—that is provide the law for the government of interstate commerce, to enact "all appropriate legislation for its protection and advancement." The *Daniel Ball,* 10 Wall., 557-564: To adopt measures "to promote its growth and insure its safety." *Mobile County v. Kimbal,* 102 U. S., 691, 695: To require intrastate rates to be increased in order to remove a discrimination against interstate rates. *Houston E. & W. T. R. Co. v. U. S.,* 234 U. S., 342, 366. Under the Interstate Clause of the Federal Constitution all of the vast property and every right of a carrier (by railroad engaged in interstate commerce) became subject to the authority to regulate possessed by Congress, to the extent that regulation may be exerted, considering the subject regulated, and what is appropriate and relevant. *Wilson v. New,* 243 U. S., 332, 389.

Railroad Commission v. Chicago, Burlington & Quincy R. R. Co. (Wisconsin Rate Case), 42 S. C. Rep., 232. Decided February 27, 1922. The court says:

> "Effective control of the one (interstate commerce) must embrace some control over the other (intrastate commerce), in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them. Commerce is a unit and does not regard state lines, and while under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the supreme authority, the nation, cannot exercise complete, effective control over interstate commerce, without incidental regulation of intrastate com-

merce, such incidental regulation is not an invasion of State authority, or a violation of the proviso."

And again:

"Congress, in its control of its interstate commerce system, is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensating return for all the work it does. The States are seeking to use the system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it, unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress, as the dominant controller of interstate commerce, may, therefore, restrain undue limitations of the earning power of the interstate commerce system, in doing State work. The affirmative power of Congress in developing interstate commerce is clear. . . . In such development it can impose and reasonable condition on a State's use of interstate carriers for intrastate commerce it deems necessary or desirable . This is because of the supremacy of the national power in this field."

Congress has ordered plaintiff's property to be valued, has fixed a scale of rates for service rendered, which will enable it to earn a fixed rate of return on this valuation, if it can; has fixed a scale of reasonable wages to be paid for services secured to carry on business; requires plaintiff to divide with it all it earns over a fixed rate of return, and denies to the States the right to discriminate in intrastate rates as against interstate rates.

The language of the act is broad enough to cover intrastate operation, for it says "may not desist from operating the road."

That Congress may require an interstate carrier, in order to make full use of its interstate facilities to engage in intrastate commerce would not seem open to question if Congress may adopt measures "to promote its growth and insure its safety." The right undoubtedly exists.

If Congress has not by the Interstate Commerce Act, as amended, compelled plaintiff to engage in intrastate commerce, the State of North Carolina, like the State of Texas, makes it compulsory upon plaintiff, under fear of pains and penalties, to refuse to conduct and carry on intrastate commerce.

In *Railroad v. Brunswick,* 72 N. C., 10-14, the Supreme Court of the State says:

> "It may be doubted whether a railroad company having accepted privileges under its charter, would have the right, upon finding it unprofitable to tear it up and deprive the public of its use."

Under the statutes of the State, Consolidated Statutes, Sec. 3515, page 75 appendix, as construed by the State, require every railroad company operating in the State to receive all freight tendered and to transport the same within the time fixed by the statute.

Reid v. R. R., 149 N. C., 423 (S. C. 153 N. C., 490), reversed as to interstate business, by this court, in *Southern Railway Company v. Reid,* 222 U. S., 424, the statute was held void as to interstate commerce.

The business of operating the railroad in intrastate commerce, being one which is required to be done, and which plaintiff is not at liberty to abandon without the consent of the government, either Federal or State, or both, is not subject to an excise or trades tax for carrying on the business.

Pullman Company v. Adams, 189 U. S., 420, 422, where the court says:

> "If the clause in the State Constitution referred to were held to impose the obligations supposed (that is that the company could not abandon the business) and to be valid, we assume without discussion that the tax would be invalid."

Allen v. Pullman Co., 191 U. S., 171 is to the same effect.

That the State may not tax a common carrier for exercising a franchise granted by the Federal Government is

settled by *California v. Central Pacific R. R. Co.*, 127 U. S., 41.

That the doing of that which the Federal Government authorizes to be done is a franchise from the Federal Government would seem not to admit of debate.

SECTION 82 (6½) IS CONTROLLED BY SECTION 82 (3½) AND AS THUS CONTROLLED VIOLATES THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

Section 82 (3½) makes applicable to the trades or franchise taxes imposed under section 82 of the Revenue Law, the same principle of taxation that is imposed upon manufacturers of automobiles by section 72 of the same statute.

That is that where the amount of property listed for taxation by a corporation is twice the amount, or more, than its capital stock, then the trade tax is only one-half what it is in the event that the amount of property listed is less than twice the amount of the capital sock, or if a corporation does business in two or more states the measure is the amount of property listed in North Carolina, as compared with a proportion of its capital stock based on the amount of property in the State compared with that outside of the State.

This method of taxation was held void in *Bethlehem Motor Co. v. Flynt*, 256 U. S., 421, 427.

We are content to rest this phase of the case upon the authority of that case as controlling.

The defendants:

> "Deny that section 82 (3½) of the Revenue Act has any application to railroads, or to the franchise or privilege tax on railroads; it is a section which was enacted in 1920 and was specifically limited in its application to taxes on corporations as levied in Section 82 of the Revenue Act of 1919; railroads and the franchise taxes thereon were not included in any part of the said Section 82 of the Revenue Act of 1919; when Section 82 (6½) was inserted

in that section in 1920, thus shifting the provision for franchise tax on railroads to this position as a sub-section of the said Section 82 from its former position as Sections 77 and 78 of the said statute, it was not intended to make the said Section 82 (3½) applicable to the said Section 82 (6½)." Answer, Sec. 31, p. r. p. 43.

An examination of the Revenue Act of 1920 (Section 7, which deals with this matter, appears in full, Appendix, page 80) discloses that:

1. The Legislature repealed Sections 77 and 78 of the Revenue Act of 1919, imposing a franchise tax on railroads.

2. It amended Section 82 (9) of the Revenue Act of 1919, which in express terms excepted railroad companies from the provisions of Section 82, by striking out the word "railroad" from the exempting clause, and made the new statute imposing the franchise tax a part of Section 82. See Section 7 and 7d Revenue Act of 1920. (Appendix, page 80).

We submit that where a statute, which prior to its amendment, by express words, exempts railroad companies from its provisions, is amended by striking out the exemption, and also by inserting a new sub-section as part of the old section, which new sub-section specifically applies to railroads alone, that it needs no argument to show the legislative intent to be that railroad companies become subject to the section.

THE TAX BEING VOID AS CONFLICTING WITH EITHER THE STATE OR FEDERAL CONSTITUTION, PLAINTIFF IS ENTITLED TO AN INJUNCTION TO PREVENT ITS COLLECTION.

This tax, when paid, becomes a part of the general funds of the State. eRvenue Act, Sec. 3, page 82 appendix.

Any claim for a refund is a claim against the State, and as such under the Constitution, the jurisdiction thereof is confined solely to the Supreme Court of the State. *Martin v. Worth,* 91 N. C., 45, 47, and under the express language of the Constitution, Article IV, Sec. 9, "its decisions shall be merely

recommendatory; no process in the nature of the execution shall issue thereon; they shall be reported to the next session of the General Assembly for its action."

"The State cannot be sued except as provided in Section 9, Article IV of the Constitution." *Burton v. Furman*, 115 N. C., 166, 171.

The Treasurer may not pay out money in the treasury except on the warrant of the Auditor. *Ibid* 171. Mandamus "does not lie (against the Auditor) where judgment and discretion are to be exercised; nor to control the officer in the manner of conducting the general duties of his office." *Ibid* 169.

Plaintiff, therefore, could not pay the tax, sue to recover it back and if held illegal have execution for its money, any judgment would be merely recommendatory.

The State, having denied to plaintiff the right to pay the tax and sue to recover it back, provided a different method for testing the legality of taxes paid directly to the State, and carried into the general fund.

Consolidated Statutes, Sec. 7979, see page 75, appendix, as construed by the highest court of the State, authorizes an injunction to prevent the collection of an illegal tax.

Dawson v. Sherrod, 154 N. C., 525, 528, 529, lays down the following principles:

> "An injunction will lie to restrain the collection of taxes and to restrain the sale of property under distraint, for three reasons, to wit: (1) If the taxes or any part thereof be assessed for an illegal or unauthorized purpose. (2) If the tax itself be illegal or invalid. (3) If the assessment of the tax be illegal or invalid. Revisal, Secs. 821 and 2855. *Purnell v. Page*, 133 N. C., 125.
>
> "In the case of *Lumber Co. v. Smith*, 146 N. C., 199, which was an action brought to collect taxes on solvent credits, Justice Connor, writing the opinion of the court for an undivided bench, held that injunction is the proper remedy as against delinquent taxes illegally sought to be collected. Upon the same point see, also, *Armstrong v.*

Stedman, 130 N. C., 217; *Ins. Co. v. Stedman*, 130 N. C., 221.

"In this case the injunctive relief sought is not merely ancillary to the principal relief demanded in the action, but is itself a main relief, for, assuredly, as to one or the other county, the tax is illegal and invalid.

"In the case of *Hyatt v. DeHart*, 140 N. C., 270, this court held that it is the general rule that the court will not dissolve an injunction where the main relief demanded in the action is injunctive.

"In *Purnell v. Page*, 133 N. C., 139, the present Chief Justice spoke for the court in these words: 'As to the other point, whether the plaintiff can maintain an injunction against the sale of his property under an illegal tax, or must pay the tax under protest and sue to recover it back, it is equally well settled that he can pursue either remedy. *Range Co. v. Carver*, 110 N. C., 221; *Armstrong v. Stedman*, 130 N. C., 217; *Brinkley v. Smith*, 130 N. C., 224, hold that under the language of the statute injunctive relief may be invoked by a taxpayer when the tax is invalid or illegal.'"

Long v. Watts, 110 S. E., 765 (decided by Supreme Court of North Carolina, March 9, 1922), was a suit to enjoin and restrain the collection of an income tax, under the Act of 1921. The court issued the injunction and made it permanent.

Plaintiff is a foreign corporation, has the right to resort to the Federal courts for the protection of its property.

"One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court; and he cannot be deprived of that right by reason of his being allowed to sue at law in a State court on the same cause of action. It is true that an enlargement of equitable rights arising from the statutes of a state may be administered by the Circuit Courts of the United States. Case of *Frederick's Will*, 66 U. S.,

503, 520; *Holland v. Challen*, 110 U. S., 15-24; *Dick v. Foraker*, 155 U. S., 404; *Bordon v. Land & River Improvement Co.*, 157 U. S., 327, 330; *Rich v. Braxton*, 158 U. S., 375, 405. But if the case in its essence be one cognizable in equity, the plaintiff—the required value being in dispute—may invoke the equity powers of the proper Circuit Court of the United States whenever jurisdiction attaches by reason of diverse citizenship, or upon any other ground of Federal jurisdiction. *Payne v. Hook*, 74 U. S., 425, 430; *McConaughy v. Wright*, 121 U. S., 201, 205. A party by going into a national court does not, this court has said, lose any right or appropriate remedy of which he might have availed himself in the State courts, in the same locality; that the wise policy of the Constitution gives him a choice of tribunals. *Davis v. Gary*, 83 U. S., 203, 221; *Crowley v. Northern Pacific Railroad Co.*, 159 U. S., 569, 583. So wherever a citizen of a State can go into the courts of a State to defend his property against the illegal acts of its officers, a citizen of another state may invoke the jurisdiction of the Federal Courts to maintain a like defense. A State cannot tie up a citizen of another state, having property rights within its territory, invaded by unauthorized acts of its own officers, to suits for redress in its own courts. *Reagan v. Farmers Loan & Trust Co.*, (No. 1) 154 U. S., 362, 391; *Mississippi Mills v. Cohn*, 150 U. S., 202, 204; *Cowles v. Mercer County*, 74 U. S., 118; *Lincoln County v. Luning*, 133 U. S., 529; *Scott v. Neeley*, 140 U. S., 106; *Chicot County v. Sherwood*, 148 U. S., 529; *Cates v. Allen*, 149 U. S., 451."

Smyth v. Ames, 169 U. S., 466, 516, 517.

Another ground for equitable relief is the removal of a cloud from the title to property.

Section 82 (12) of the eRvenue Act, page 87 of appendix, makes this tax a "first and best lien on all property of the public utility or corporation, whether such property is employed" in the business or not.

Shaffer v. Carter, 252 U. S., 37, 51, as to an income tax, held valid, which was made a lien upon all the property of the tax payer, the court said:

> "The procedure prescribed by paragraph 11 of the Income tax Law for enforcing such a tax by imposing a lien upon the taxpayer's entire property, as threatened to be put into effect against plaintiff's property, for taxes not assessed against the property itself, and not confined to the income that proceeded from the same property, is not 'due process of law,' within the requirements of the Fourteenth Amendment. For removal of a cloud upon title caused by an invalid lien imposed for a tax valid in itself, there appears to be no legal remedy. Hence, on this ground, at least, resort was properly had to equity for relief; and since a court of equity does not 'do justice by halves,' and will prevent, if possible, a multiplicity of suits, the jurisdiction extends to the disposition of all questions raised by the bill. *Camp v. Boyd*, 229 U. S., 530, 551, 552; *McGowan v. Parish*, 237 U. S., 285, 296."

Another ground of equitable relief against a threatened wrongful action is that if the law does not provide a plain and adequate remedy at law, resort may be had to courts of equity to enjoin and prevent the wrongful act, so that no person shall be left remediless in the protection of his life, liberty and property.

> "It is a settled principle of equity jurisprudence that if the remedy at law be doubtful, a court of equity will not decline cognizance of the suit . . . Where equity can give relief, plaintiff ought not to be compelled to speculate upon the chance of his obtaining relief at law. *Davis v. Wakelee*, 156 U. S., 680, 688." *Union Pacific R. R. Co. v. Weld County*, 247 U. S., 282, 286, 287.

Defendants may contend that an act of the Legislature passed after this suit was brought (see appendix, page 102), which authorizes the Auditor upon the recommendation of the head

of a department receiving a tax, paid upon mistake or misapprehension of the law, to issue his warrant for the repayment thereof, when such recommendation is approved by the Attorney General of the State, affords a complete and adequate remedy.

This statute does not authorize a suit to be brought to test the validity of the tax, it does not require the head of the department to act, it has never been construed by the State court, it was in existence when *Long v. Watts, Commissioner of Revenue,* 110 S. E., 705, was brought, yet the injunction was granted, it was not passed until after this suit was brought.

Wherefore, it is respectfully submitted:

1. That the tax in question is a tax levied upon property of plaintiff within the meaning of the Constitution, Art. V, Sec. 3 and 6, was not levied by a uniform rule upon all property in the State, was levied for the support of the State, is twice the amount which the Constitution says may be levied for such purposes, is illegal and void, and the court erred in not so holding.

2. That as a tax upon or for the privilege of operating a railroad in the State, as applied to plaintiff, which is engaged in both inter and intrastate commerce, the language of the statute used in its ordinary acceptance is broad enough to and does include the business of interstate commerce, that the courts are not at liberty to restrict the language used by the Legislature, and constitutes a direct burden upon interstate commerce, and as such is in conflict with the commerce clause of the Federal Constitution, and the court below erred in failing to so hold.

3. That under Section 82 (3½) and (6½) the statute imposes a tax of twice the amount upon a railroad corporation which has property less than twice the amount of its capital stock, that it imposes upon one that has property twice the amount, or more, than its capital stock and violates the Fourteenth Amendment to the Federal Constitution and is void; that the court below erred in failing to so hold.

4. That the tax being illegal and void, the court erred in failing to hold that plaintiff was entitled to an injunction *pendente lite,* and also upon final hearing, to a permanent injunction.

PART II.

ASSESSMENT.

The assessment of plaintiff's property for taxation is the basis for the amount of plaintiff's tax, both the so called trade tax, and the admitted ad valorem tax, levied by the several local taxing districts; the validity of the assessment is attacked upon the ground, that:

(1) In assessing plaintiff's property, the assessing body did not comply with or follow the method pointed out by the Constitution and laws of the State; and,

(2) The assessing body, in violation of the due process clause of the 14th Amendment, imported values from another State into North Carolina; and,

(3) The acts of the assessing body, under the state statutes, as construed and applied by them in the assessment of plaintiff's property, violated the Uniformity Clause of both the State Constitution and the 14th Amendment to the Federal Constitution; and,

(4) The statutes of the state, as applied by the assessing officers, show a settled design to unlawfully discriminate against plaintiff and other railroad companies in violation of both the State and the Federal Constitution; and,

(5) The assessment as made is illegal and void.

(6) The plaintiff is entitled, upon the pleadings and proof, upon the final hearing, to a permanent injunction, and pending final hearing to an interlocutory injunction against the collection of taxes on the illegal assessment.

(7) The Court erred in failing to so hold.

See assignment of errors, p.r.p. 102-103.

FACTS

The Constitution of the State, Article V, Sec. 3, requires that all property in the State shall be taxed by one uniform rule; the courts of the state hold that this applies not only to the rate of taxation, but to the mode of assessment.

Worth v. R. R., 89 N. C., 301-309.

Under the system of taxation prevailing in North Carolina all taxable property is required to be listed annually, all listed personal property is appraised annually, real estate and railroad property is appraised quadrennially.

1919 was the year for the quadrennial appraisement of lands and railroad property; the Legislature, at its biennial session in 1919 continued in force for the tax year 1919 the then existing assessment, and provided an elaborate organization for the appraisal of property of all kinds. The State Tax Commission was the head of this organization.

This revaluation was not to become effective until reported to and adopted by the legislature at an extra session to be called for that purpose. Such session was held in August 1920, the report received and adopted and declared binding for the years 1920, 1921, 1922 and 1923, unless changed by law.

The legislature, at its regular biennial session held in 1921, enacted two statutes, one called the Revenue Act, imposing taxes for the support of the State, and its local subdivisions, Chapter 34, Public Laws, 1921, and the other called the Machinery Act, Chapter 38, Public Laws, 1921, providing for the listing of all taxable property, and the revaluation of all real estate, (except railroads).

Section 28 (a) of Chapter 38, Public Laws, 1921, required the Board of County Commissioners and the County Board of Appraisers of each county in the state to meet during the month of April 1921, as a county board of review, and to determine if the value of real estate as a whole in their respective counties, as then appraised for taxation, was in excess of its then fair value. It was required to find the average per centage of such

excess. This finding was to be reported to the State Tax Commission, and unless changed by it the assessed value of property in the several counties was to be reduced accordingly. (See Appendix, page 89).

More than 70, out of the 100 counties of the State, reported that the then assessed value of real estate was in excess of the fair value by percentages varying from 10 per cent to 50 per cent, and the assessed value of real estate in the several counties was reduced accordingly.

An examination of all conveyances of real estate recorded in the offices of the registers of of deeds of 98 out of the 100 counties, (where all deeds must be recorded to be valid against creditors or subsequent conveyances) between January 1st and June 30, 1921, where the consideration was $1,000.00 or more, disclosed the fact that the assessed value was 66.58 per cent of the actual sale value.

This result was obtained by listing the name of the grantor, grantee, date of conveyance, book and page where recorded, consideration and assessed value. The consideration was that named in the deed, except where the Internal Revenue Documentary Stamps showed a different consideration, then the consideration shown by the stamps was taken as the true consideration. These lists were all filed in the Court below, tabulated and the tabulation appears in the printed record, p. 67-72.

PROPERTY OF RAILROAD CORPORATIONS AND CERTAIN OTHER CLASSES OF PROPERTY IS PRIMARILY ASSESSED FOR TAXATION BY THE STATE TAX COMMISSION.

As to all that class of property which in the first instance is assessed by the Corporation Commission, the Machinery Act did not, (as it did with other real estate) require it to be reappraised, but gave the owner of such property the right to file a petition with the State Tax Commission, asking to have the appraisal reviewed.

(Sec. 28 (g) Machinery Act, Appendix, page 90).

The valuation adopted by the legislature in August 1920 increased the value of real estate as appraised for taxation from $506,808,394.00 to $2,006,124,994.00 or nearly 300 per cent, thus showing a very great prior undervaluation.

The property of the railroads in the state was increased from $125,417,618.00 to $250,587,158.00 or not quite 100 per cent.

The State Tax Commission, in its report to the legislature gave as a reason why there was not a greater increase in railroad property, that such property was already (according to common understanding) assessed at its full value, the exact language being:

> "One frequent criticism has been that the valuation of railroad properties could not be increased, it being understood that they were assessed at full value before."

MODE OF ASSESSMENT OF PROPERTY ACCORDING TO THE STATUTES OF THE STATE.

(1) *Real Estate and Tangible Personal Property.*

Are required to be valued or appraised at their true value in money. Secs. 21, 22 Chapter 38, Public Laws, 1921, Machinery Act. (Appendix page 88).

(2) Sec. 23, Chapter 38, Public Laws 1921, defines the term "true value in money" as follows:

> "The intent and purpose of the tax laws of this state is to have all property and subjects of taxation assessed at their true and actual value in money, in such manner as such property and subjects are usually sold, but not by forced sale thereof, and the words 'market value' or 'true value' whenever in the tax laws shall be held and deemed to mean what the property and subjects would bring at cash when sold in such manner as such property and subjects are usually sold.

(3) *Shares of Stock of Corporations.*

"Individual stockholders in any corporation, joint stock association, limited partnership, or company paying a tax on its capital stock, shall not be required to pay any tax on

said stock or list the same, nor shall corporations legally holding capital stock in other corporations in this State, upon which the tax has been paid by the corporations in this State, upon which the tax has been paid by the corporation issuing the same, be required to pay any tax on said stock or list the same. Nor shall any individual stockholder of any foreign corporation be required to list or pay taxes on any share of its capital stock if two-thirds in value of its entire property is situated and taxed in the State of North Carolina, or if such corporation has tangible assets within this State assessed for taxation at value exceeding the par value of the total stock owned by citizens of this state and the said corporations pays franchise tax on its entire issued and outstanding capital stock at the same rate as paid by domestic corporations." (Sec. 4, Chapter 34, Public Laws, 1921, Revenue Act).

(4) *Capital Stock of Corporations, Except those Otherwise Specially Provided For.*

Corporations report to the State Tax Commission each year their authorized capital stock, number of shares issued, par value, amount paid into the treasury on each share. amount of capital stock paid in, amount of capital stock on which dividends were declared, date of dividends declared during each year ending May 1, amount of each dividend during each year ending May 1, highest price of sales of stock between May 1 and 15-the of each year, highest price each year, and average for the year. The president or other designated officer of the corporation, upon oath, appraises the capital stock at its actual value as of May 1 of each year, which appraisal is based on or "measured by the amount of profits made either declared on dividends or carried into surplus or sinking fund."

From this valuation or appraisal is deducted:

(1) The assessed value of all real and personal property in the State owned and listed for taxation by the Corporation, and (2) The value of all shares of stock (owned by the Corporation) in other domestic corporations, paying a tax on its cap-

ital stock, and (3) The total amount actually invested (for three months or more prior to May 1st of each year) in bonds of (a) the State, (b) the United States, (c) any Federal Farm Loan or Joint Stock Land Bank; the amount left is declared to be the assessed value of the capital stock, subject to taxation. The appraisal is subject to review by the State Tax Commissioner, and from his review and findings an appeal liees to the Courts.

In the language of the defendants in another suit between the same parties, "The revenue laws of the State have identified the ownership of shares in ordinary corporations with the property itself of the corporation." Sec. 43, Chapter 38, Public Laws 1921, Appendix page 92.

(5) *Shares of stock of Banks.*

The shares of stock of banks, State and National, are listed by the bank for the shareholder, the bank pays the tax and may if it so elects deduct the tax from any dividends declared or collect from the shareholder.

The shares of stock are required to be valued at the market value of such shares on the 1st day of May of each year, and if there be no market value, then at their actual value, less or after deducting the assessed value of all real and personal property owned, listed by the bank, and investment in bonds of the State, made from the surplus of the bank, more than ninety days from the 1st day of May.

(Sec. 42, Chapter 38, Public Laws, 1921, Machinery Act, Appendix, page 90).

(6) *Telegraph, Telephone, Express, Sleeping Car, Refrigerator and Freight Car, Street Railways, Waterworks, Electric Light and Power, Gas, Ferry, Bridge, Canal and all other Corporations, (except railroads) exercising the right of eminent domain.*

Under sections 49 to 54 of Chapter 38, Public Laws, 1921, both inclusive, the corporations of the kind above mentioned, are required to make reports to the State Tax Commission, giving certain information as to each class and under section 55 of

said statute the State Tax Commission may require any other information desired.

We have not printed the sections above named as part of the appendix as we do not consider the form of the report material.

Sec. 57, Chapter 38, Public Laws, 1921, then provides:

From the information furnished the State Tax Commission is required to value all of the property of such corporations and the statute declares that such valuation or appraisement shall be made by;

> "Taking the aggregate value of all the shares of capital stock in case shares have a market value, and in case they have none, taking the actual value thereof, or of the capital of said association, company, co-partnership or corporation in whatever manner the same is derived, in case no shares of stock have been issued; Provided, however, that in case the whole or any portion of the property of such association, company, copartnership or corporation shall be encumbered by a mortgage or mortgages, such board shall find the true cash value by adding to the market value of the aggregate shares of stock, or to the value of the capital if there should be no such shares the aggregate amounts of such mortgages and the result shall be deemed and treated as the true cash value of the property of the corporation."

If the corporation owns property in other states the value of the entire property ascertained as above is directed to be divided between the States according to certain rules set out in the statute, not deemed material to quote. Corporations of the kind above indicated are required to list locally with the local list takers and have appraised locally real estate not used in the daily business of the company; the appraised value of this locally listed real estate is deducted from the value of the property in the State as found by the State Tax Commission. So that the State Tax Commission, in fact, only appraises that which is not appraised locally and this appraisal is the market value of the stock, plus the mortgages, if any, deducting the locally appraised property.

(7) *Railroads.*

As to corporations, whose road is situate in two or more states, the State Tax Commission is required to find, in the manner provided by the statute, the value of the whole system, and to allocate this total value between the several states, on a main line mileage proportion, giving due regard to such factors, if any, as would increase or decrease the relative value of the main line in North Carolina.

Sec. 65, Chapter 38, P. L. 1921, Appendix, page 101.

This is the statute which the Commissioners of Revenue interprets as requiring an absolute main line mileage allocation.

The statute declares that "aggregate value of the physical or tangible property and the franchise as determined" in the mode required by the statute "shall be the true value of the property for the purpose of ad valorem taxation. Sect. 64 (c) Chapter 38, P. L. 1921, Appendix, page 100.

The statute directs that the franchise shall be valued in the following manner:

> "By due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration OF THE VALUE PLACED UPON THE WHOLE PROPERTY BY THE PUBLIC (the value of the physical property being deducted), AS EVIDENCED BY THE MARKET VALUE OF ALL THE CAPITAL STOCK, CERTIFICATES OF INDEBTEDNESS, BONDS OR ANY OTHER SECURITIES, THE VALUE OF WHICH IS BASED UPON THE EARNING CAPACITY OF THE PROPERTY." (Capitals supplied.)

Sec. 64-b Chapter 38, P. L. 1921, Appendix, page 100.

That is, the statute recognizes, that the value of the whole railroad, is the market value of its stocks and securities which represent the property.

The value of the physical property which is to be deducted, is the assessed value, a part of the physical property is locally listed and assessed, and the assessed value of this part is certified to the State Tax Commission.

The Railroad, itself, is appraised by the State Tax Commission, under section 64 (a), Chapter 38 Public Laws, 1921 Appendix page 100, which requires that this value shall be "determined by a due consideration of the actual cost of replacing the property with a just allowance for depreciation on rolling stock, and also other conditions to be considered as in the case of private property."

The State Tax Commission construes this to be either replacement cost or investment account costs.

The portion of the property assessed locally and that assessed by the State Tax Commission is defined in Sec. 62, Chapter 38, Public Laws 1921.

MODE OF ASSESSMENT ACTUALLY EMPLOYED AND RESULTS

(1) *Personal Property.*

"The valuation upon personal property is made by the tax payer when he lists his property and is binding upon the list taker but it may be corrected by the County Commissioners or Board of Equalization at the date fixed by the statute upon notice to the taxpayer."

Guano Co. v. New Bern, 172 N. C., 258.

Presumably this law is followed, therefore the tax payer values his own personal property. How this compares with true value there is no means of checking.

(2) *Real Estate.*

This is valued by appraisers as a matter of opinion, as to what it will sell for in the open market. The result as shown by the summary of the affidavits filed in the Court below (a copy of one of which is found in the printed record) as shown by the affidavit of C. J. O'Brien, is that real estate was in 1921 valued at 66.58 per cent of its actual sale value.

(3) Shares of stock of Corporations, in the hands of individuals or corporations. Not listed, appraised or taxed, except shares of stock in banks.

(4) Bank Stock, Shares of,

At market value, when they have any, if no market value then the actual value on the 1st day of May of each year, less deductions made as authorized by the statute.

(5) Property of Telegraph, Telephone and other corporations above referred to exercising the right of eminent domain, except railroads.

By the market value of the stock, either shares or otherwise, plus the amount of any mortgages on the property.

(6) *Railroads.*

We are not left to speculate, either as to the mode of or reason for the assessment of railroad properties in North Carolina. The State Tax Commission, in its report to the legislature, (p. r. p. 81) which was adopted by the legislature, as to this says:

> "Generally our valuation of the railroad lines in this State is based upon a mileage proportion of their investment account, which they have asked the Interstate Commerce Commission to adopt as the basis for making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines, based upon the volume of business in this state, greater than the average volume of traffic on their lines as a whole."

As to plaintiff's individual property, the Commissioner of Revenue (State Tax Commission) upon petition filed under the provisions of Section 28 (g) of Chapter 38, Public Laws, 1921, reduced the valuation on appraisement of plaintiff's property from a main line mileage proportion of its investment account to a main line mileage proportion of the cost of reproduction new brought down to date, less depreciation, as found by the Interstate Commerce Commission, reported to the States of North Carolina and Virginia, and not excepted to.

The reasons for adopting these valuations are given by the appraising bodies as follows:

By the State Tax Commission, for the original assessment:

(1) "Under the new Interstate Commerce Act, the Interstate Commerce Commission was required to make rates that will yield an average return of not less than five and one half per cent upon the railroad lines as a whole, and to find the fair value of these properties as a basis for making the new rates." p. c. p. 91.

(2) The Interstate Commerce Commission could not for many years complete the physical valuation of the railroad properties, and pending this final valuation the railroads have submitted to the Interstate Commerce Commission their combined investment account as the value upon which rates should be based.

(3) In the opinion of the State Tax Commission the "TIME HAS COME WHEN THE VALUE UPON WHICH A RAILROAD OR PUBLIC UTILITY IS PERMITTED TO EARN A RETURN IS THE VALUE UPON WHICH IT SHOULD PAY TAXES IN THE STATE."

(4) The increased value of other property in the State led to criticism, because it was understood that railroad property being already assessed at full value could not lawfully be increased.

To meet this criticism it became necessary to raise the assessment of railroad property.

The Commission adopted the expedient of taking their investment account and attempt to justify it upon the ground, as they say in their affidavit filed, that:

"A satisfactory estimate of value could not be made based upon the market value of the stocks and bonds of these companies on the first day of May, 1913, for the reason that the limited market and the limited number of shares and bonds sold on the market did not furnish, in our judgment, a fair index of the actual value of these properties as a whole, and more particularly did not furnish an index of the actual value of the properties of these companies located within the State of North Carolina, for the reasons hereinbefore stated; nor was it considered that the actual

5

5

value of these properties could be fairly determined by their earnings, until there should be a fair return to normal conditions of operating costs, flow of traffic and stabilization of rates."

The Commissioner of Revenue, who after July 1, 1921, was vested with the powers of the State Tax Commission, in his answer says:

(1) "The statutes of North Carolina provide for the ascertainment of the proportion of plaintiff's properties in that state by the use of a main line mileage proportion. The correct main line mileage proportion is alleged by plaintiff 12.246 per cent for Virginia and 87.754 per cent for North Carolina, and that these properties were used." See p. r. p. 38.

(2) The ascertainment and finding of the Interstate Commerce Commission of the relative cost of reproduction new less depreciation in the two states where plaintiff's line is located, has no binding effect because the statutes require otherwise." See p. r. p. 38.

(3) Plaintiff, in its petition for review of the prior assessment filed in July, 1921, set out the cost of reproduction new less depreciation, brought down to date, the average market value of its and its lessor's stocks and bonds, over a period of five years average returns from the property showed a valuation based on a division of each of these sums, both by a main line mileage proportion and one based on the relative cost of reproduction new less depreciation, to-wit 18 percent for Virginia and 82 per cent for North Carolina. The defendant, Commissioner of Revenue avers that as these figures were set out by plaintiff in its petition for a review of the prior assessment based on investment account, plaintiff assented to an appraisal of its property based on a main line mileage proportion of cost of reproduction new less depreciation. (See Answer.)

The petition appears in full in the printed record, pages 82 to 88.

FURTHER FACTS

The average market value of all plaintiff's and its lessor companies' stocks, bonds and evidences of indebtedness for a period of six years was $17,717,000.00 p. r. p. 21.

The total Railway Operating Income from the properties for the five years eight months ended August 31, 1921, was $528,-161.31. See table p. r. p. 22.

The standard return, as fixed by the Interstate Commerce Commission under the Federal control Act, for the three years ended June 30, 1917, (being the earnings from the property after taxes and car hire) was $1,252,759.84 per year.

This represents the annual average income of the company from July 1, 1914 to August 31, 1920, with which it might pay rent of leased roads, interest and other fixed charges and dividends or return to stockholders if any. p. r. p. 84.

ARGUMENT

NEITHER THE STATE TAX COMMISSION, NOR THE COMMISSIONERS OF REVENUE FOLLOWED OR COMPLIED WITH THE CONSTITUTION OF THE STATE OR THE STATUTES, WHEN THEY ASSESSED PLAINTIFF'S PROPERTY FOR TAXATION ON A MAIN LINE MILEAGE PROPORTION OF (A) THE INVESTMENT ACCOUNT; OR (B) THE COST OF REPRODUCTION NEW BROUGHT DOWN TO DATE, AND THEREFORE THE ASSESSMENT IS ILLEGAL.

Louisville & N. R. R. v. Greene, 244 U. S., 522, 524, lays down this rule:

"The findings of an official body such as the Board of Valuation and Assessment, made—as was the case here—after hearing and upon notice to the tax payer, are quasi judicial in their character, and are not to be set aside or disregarded by the courts, unless it is made to appear that THE BODY PROCEEDED UPON AN ERRONEOUS

PRINCIPLE OR ADOPTED AN IMPROPER MODE OF ESTIMATING THE VALUE OF THE FRANCHISE OR FRAUD APPEARS. Pittsburg, *C. C. & St. L. R. Co. v. Backus*, 154 U. S., 421, 435, 436; *Chicago, B. & Q. R. Co. v. Babcock*, 204 U. S., 585, 586. In this case there is no showing of fraud, THE CONTENTION BEING THAT THE BOARD DEPARTED FROM THE MODE PRESCRIBED BY THE STATUTES. IF THEY DID THIS, OR IF THEY PROCEEDED IN DISREGARD OF THE RIGHTS SECURED TO THE TAXPAYER BY THE STATE OR FEDERAL CONSTITUTION, OF COURSE THEY PROCEEDED UPON AN ERRONEOUS PRINCIPLE." (Capitals supplied.)

See also:

Cummins v. Merchants Ntl. Bank, 101 U. S., 153-164,
Raymond v. Chicago Union T. Co., 207 U. S., 20-41.

The right secured to plaintiff under the constitution of the state is to have all property in the state listed for taxation and assessed as to value by one uniform rule.

Constitution, Article V, Sec. 3,
Guano Company v. New Bern, 172 N. C., 258,
Redmond v. Commissioners, 106 N. C., 122,
Puitt v. Commissioners, 94 N. C., 709,
Kyle v. Commissioners, 75 N. C., 445,
Worth v. R. R., 89 N. C., 301,
A. & N. C. R. R. v. New Bern, 147 N. C., 165.

Plaintiff's property, as a whole, is valued by the Commission at the cost of reproduction new brought down to date, less depreciation as reported by the Interstate Commerce Commission to the State of North Carolina, and not objected.

This valuation is divided between the two states on a main line mileage proportion, the Commissioner of Revenue says the statutes of the state so provide.

The same report from the Interstate Commerce Commission to the state, (which was not excepted to) showing the cost of reproduction new, less depreciation, of plaintiff's line of railroad, which was adopted as the basis of the assessment, also shows the cost of reproduction new less depreciation of that part in Virginia and also of that part in North Carolina. Of course the percentage that each part is of the whole is a mere matter of mathematical calculation.

It is averred to be 82 per cent North Carolina and 18 per cent Virginia. See affidavit M. S. Hawkins, p. r. p. 73.

It is respectfully submitted that the Commissioner of Revenue misconstrued the statute. Sec. 65, Chapter 38, Public Laws 1921, Appendix page, 101.

The statute expressly recognizes that there may be factors which would give that part of the line in North Carolina, a greater or less value than the average of the whole system.

The statute commands that the assessing body shall consider these factors, if they exist.

Bearing in mind that the basis of valuation is reproduction cost and nothing else, (for this is admitted) then nothing else appearing, the actual value of the proportion in North Carolina must necessarily be the cost of reproduction of that part in North Carolina.

We respectfully submit that neither the Constitution of the State, nor the statutes justify taking the cost of reproduction new less depreciation as the true value in money of plaintiff's property.

Wilmington, C. & A. R. R. Co., v. Brunswick, 72 N. C., 10, lays down these rules:

"If it was made to appear that they (an assessing body) proceeded upon an erroneous principle, we might perhaps correct their valuation; but an error in the fact of the value of the property is beyond our power to correct.

We are not called on, and will not unnecessarily undertake to say as law, upon what principle the roadbed and

superstructure of a railroad shold be valued. But it may be useful to suggest for the consideration of county officers, some views which seem reasonable.

1. The cost of a structure, whether it be a house, or a railroad, is not the test of its value for taxation. Many instances might be given to show that such a rule would be absurd. A man may build a very costly house in a place which is afterwards found out to be malarious, and it is consequently valuless for habitation. An inventor constructs a costly machine, which from some fault does not work, etc.

2. Neither is the value of the ties and rails, if removed, a test. It may be doubted whether a railroad company, having accepted privileges under its charter, would have a right, upon finding its road unprofitable, to tear it up and deprive the public of its use. THE TRUE POINT OF INQUIRY IS, WHAT IS THE VALUE OF THE LAND AND STRUCTURE AS IS ACTUALLY USED, OR AS IT IS CAPABLE OF BEING USED, WITHOUT LOSING ITS CHRACTER AS AS A RAILROAD." (Capitals supplied).

In line with the above decision by the Supreme Court of North Carolina are the decisions of this Court, as well as the Courts of other States.

Columbus Southern R. R. v. Wright, 151 U. S. 470 quotes with approval from Nashville, *C. & St. L. R. R. Co., v. Franklin County,* 12 Lea (Tenn.) as follows:

"The property of a railroad company, for the purpose of taxation, consists of its realty, its local personalty, its rolling stock, its choses in action, and its franchises. The franchise is the privilege conferred, by the charter of incorporation namely the right to exercise all the powers granted in the mode prescribed for the purpose of profit. It is a unit, not confined to any one country in which it may be exercised * * * The roadway itself of a railroad depends for its value upon the traffic of the company, and not merely upon the narrow strip of land appropriated for the use of the road, and the bars and cross ties thereon.

THE VALUE OF THE ROADWAY AT ANY TIME IS NOT THE ORIGINAL COST, NOR, A FORTIORI, ITS ULTIMATE COST AFTER YEARS OF EXPENDITURES IN REPAIRS AND IMPROVEMENTS.

ON THE OTHER HAND, ITS VALUE CANNOT BE DETERMINED BY ASCERTAINING THE VALUE OF THE LAND INCLUDED IN THE ROAD ASSESSED AT MARKET PRICE OF ADJACENT LANDS, AND ADDING THE VALUE OF THE CROSS TIES, RAIL AND SPIKES.

THE VALUE OF THE LAND DEPENDS LARGELY UPON THE USE TO WHICH IT CAN BE PUT, AND THE CHARACTER OF THE IMPROVEMENTS UPON IT.

THE ASSESSABLE VALUE, FOR TAXATION, OF A RAILROAD TRACK CAN ONLY BE DETERMINED BY LOOKING AT THE ELEMENTS ON WHICH THE FINANCIAL CONDITION OF THE COMPANY DEPENDS, ITS TRAFFIC, AS EVIDENCED BY THE ROLLING STOCK AND GROSS EARNINGS IN CONNECTION WITH ITS CAPITAL STOCK."(Capitals supplied).

Cleveland, C. C. & St. L. R. R. Co., v. Backus, 154 U. S., 421 lays down the rule as follows:

"The stock and the indebtedness represent the property. As said by Mr. Justice Miller in State R. Tax Case 92 U. S. 605 (23 Law Ed. 670): 'When you have ascertained the current cash value of the whole funded debt and the current cash value of the entire number of shares, you have, by the action of those who above all others can best estimate it, ascertained the true value of the road, all its property, its capital stock, and its franchises; for those are all represented by the value of its bonded debt and of the shares of its capital stock."

Branson v. Bush, 251 U. S. 182, says:

'This is the method of assessing railroad property, often

approved by this Court, specifically in Cleveland, C. C. & St. L. R. Co., v. Backus, 154 U. S. 430, 445 * * * saying:

"The rule of property taxation is that the value of the property is the basis of taxation. It does not mean a tax upon the earnings which the property makes, nor for the privileges of using the property, but rests solely upon value. But the value of property results from the use to which it is put, and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use. The amount and profitable character of such use determines the value and if property is taxed at its actual cash value it is taxed upon something which is created by the uses to which it is put."

State v. Central Pacific Co., 10 Nev., 47-74, says:

"To determine the value of a railroad, then, the very first inquiry is as to its actual cost, the necessary cost is the proper standard. If it further appears that the net income of the road does not amount to current rates of interest on its necessary cost, and is not likely to do so, or if the busi ness of the road is likely to be destroyed or impaired by competition or other causes or, in short if the utility of the road is not equal to its costs then its value is less than its cost, and must be determined by reference to its utility alone."

And, People v. Clapp, 152 N. Y., 400, 46 N. E. 842, says:

"There is no reason that we can perceive for assessing this property at a greater sum than the cost of replacement, it may not in every case be worth what it would cost to reproduce it. That would depend upon the income or earning capacity of the road after it was built."

The above authorities establish the principle which is of course sound, that the value of a structure is not necessarily

what it cost, but on the other hand either what it will sell for or what it can be made to yield.

Defendants in their answer, section 23, page 40, say:

> "A sale of the entire securities of such corporation would in no way constitute a transfer of the large intangible property values inhering in the right to that corporation to exist and to do business as such and other intangible values inhering in it, and many of such values and properties could not be sold or transferred at all by the railroad corporation without the consent of the State."

This position, of course, is based on what the Supreme Court of the State said in the case of Wilmington, C. & A. R. R. v. Brunswick, supra, as to the right of a railroad company to abandon its franchise or stop the operation of the road, which of course prevents a sale of its property without legislative consent.

What then is the value in money of a piece of property which cannot without legislative consent be sold or its operation stopped?

Is it the cost of reproduction new, less depreciation, or that sum on which plaintiff may, if it can, earn 5½ per cent?

We submit the reasoning given by the State Tax Commission for its conclusion is faulty.

The assessors say Interstate Commerce Commission has been required to fix a rate which will yield to all the railroads in the United States 5½ per cent on the aggregate value of all the property of all railroads; we will tax each railroad on the basis of its porportion of the amount on which the whole may earn, if they can. The result is the poor road with light traffic and small return pays on an overvaluation, the other road either goes comparatively free or the rule of assessment is varied.

Rather, we submit, is the proper and true value that sum

which the net income capitalized at current rates of interest would produce.

This rule would bring the mode of assessment in harmony with the decisions, *supra*, as to what constitutes the value of a railroad, would comply with the statute, which says they value of the entire property, tangible and intangible, shall be the value which the public places on the property, as evidenced by the market value of its stocks, bonds and certificates of indebtedness dependent for their value on the earning capacity of the property. The statute says the aggregate value of the tangible and intangible property shall be the true value for ad valorem taxes. The intangible value is declared to be the sum which the public determines as shown by the market value of the stocks and bonds, and from this intangible value the value of the tangible property is to be deducted. Appendix page 86. The statute, therefore, never contemplated that the property should be valued at more that the market value of the stocks and bonds.

Wherefore it is respectfully submitted that the mode of assessment was not that provided by the statute or the Constitution.

THE ASSESSMENT AS MADE UNLAWFULLY IMPORTS VALUES INTO THE STATE IN VIOLATION OF THE 14TH AMENDMENT TO THE FEDERAL CONSTITUTION.

This contention is based on the following admitted facts, or facts incapable of serious controversy:

1. The basis of assessment is a main line mileage proportion of the cost of reproduction new of the whole system, brought down to date, less depreciation, as reported to the State of North Carolina by the Interstate Commerce Commission, and not excepted to.

2. That this main line mileage proportion is 87.754 per cent, for North Carolina and 12.246 per cent, for Virginia.

3. That the actual cost of reproducing that part of the line in Virginia is 18 per cent, and in North Carolina 82 per cent, of the whole cost of reproduction new brought down to date, less depreciation, as reported by the Interstate Commerce Commission.

4. That the Commissioner of Revenue says he is required by statute to use the main line mileage proportion, instead of the actual relative cost in alocating the whole value between the two States.

The only question then is, do these facts bring the case at bar within the principle laid down in Wallace v. Hines, 253 U. S., 66170, where the Court says:

> "As the law is administered, the tax commission fixes the value of the total property of each railroad by the total value of its stocks and bonds, and assesses the proportion of this value that the main line track mileage in North Dakota bears to the main track of the whole line. But on the allegations of the bill, which is all we have before us, the circumstances are such as to make that mode of assessment indefensible. North Dakota is a State of plains, very different from the other States, and the cost of the road there was much less than it was in the mountainous regious that the road had to traverse. The State is mainly agricultural. Its markets are outside its boundaries, and most of the distributing centers from which it purchases are also outside. It naturally follows that the great and very valuable terminals of the road are in other States. So looking only to the physical track, the injustice of assuming the value to be evenly distributed according to the main line track is plain. But that is not all. The only reason for a State to look beyond its borders, when it taxes the property of foreign corporations, is that it may get the true value of the thing within it, when they are part of an organic system of wide extent that gives them a value above what they

otherwise would possess. The purpose is not to expose the heel of the system to a mortal dart,—not, in other words, to open to taxation what is not within the State. Therefore no property of such an interstate road situated elsewhere can be taken into account unless it can be seen in some plain and fairly intelligible way that it adds to the value of the road and the rights exercised in the State."

The case at bar is even stronger than the above mentioned case.

The basis of assessment is reproduction cost. The statute as interpreted requires a main line mileage proportion, irrespective of relative cost, which is the basis of value; this requirement of the statute takes $1,300,000.00 from the 112 miles in Virginia, and adds it to the 800 miles, or thereabouts, in North Carolina. It is indefensible.

THE STATUTES OF THE STATE, IN AND OF THEMSELVES, CREATE A SYSTEM OF TAXATION WHICH VIOLATES THE UNIFORMITY CLAUSE OF THE STATE CONSTITUTION AND THE 14TH AMENDMENT TO THE FEDERAL CONSTITUTION.

The Constitution of the State, Article V, Sec., 3, specifically requires that:

"Laws shall be passed taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise."

Says the Supreme Court of the State as to this provision of the Constitution:

> "The subjects of every state ought to contribute to the support of the government, as nearly as possible, in proportion to their respective abilities, that is, in proportion to the revenue which they respectively enjoy under the protection of the State. The expense of the government to the individuals of a great nation is like

the expense of management to the joint tenants of a great estate, where all are obliged to contribute in proportion to their respective interests in the estate. In the observation or neglect of this maxim consists what is called equality or inequality of taxation.

Under the construction of the Constituuon, as declared in Pullen's case, it would be in the discretion of the legislature to unequally distribute the burden necessarily incident to government, and the worst species of class legislation would be tolerated. It would (says Dixon, C. J., in Knowltown v. Supervisors, 9 Wis., 422) make the Constitution operative only to the extent of prohibiting the legislature from discriminating in favor of particular individuals and would reduce the people, while considering so grave and important a proposition, to the ridiculous attitude of saying to the legislature, you shall not discriminate between single individuals or corporations, but you may divide the citizens up into different classes as * * * owners of different species or descriptions of property, and legislate for one class and against another as much as you please, provided you serve all of the favored or unfavored classes alike, thus affording a direct and solemn constitutional sanction to a system of taxation so manifestly and grossly unjust that it will not find an apologist anywhere—at least outside of those who are the recipients of its favors.'

Such a construction, in our opinion, not only offends the true spirit of the Constitution, but has been distinctly and solemnly repudiated by the uniform decisions of this Court in subsequent cases. These cases decide that when the taxing power is exercised for a public purpose, the Constitution, and not the legislature, declared what property shall be taxed, and that it requires that all shall be taxed by a uniform rule and ad valorem."

Redmond v. Commissioners, 106 N. C., 122.

Plaintiff, under the Constitution of the State, has the right to have all property in the State, including investments in bonds, stocks, joint stock companies, placed on the tax list, and have them assessed at their true value in money by one uniform rule.

This the legislature declines to do.

As has already been shown, supra page 50, the legislature expressly provides that no individual stockholder in any corporation or joint stock company shall be required to list stock owned or pay any taxes thereon, where it is stock of a domestic corporation, or if, of a foreign corporation, when two thirds of the corporation's entire property is situated in the State, or if the corporation has tangible assets in the state equal to the par value of the stock of the company held in the state, and the corporation pays a franchise tax.

It will no doubt be contended that while the statute does not require the individual stockholder to list and pay a tax upon his investment in bonds, stocks, joint stock companies, or otherwise, the corporation pays on the capital stock and this is a compliance with the Constitution.

As we have already seen, the statute requires corporations to list their capital stock, and directs how it shall be assessed. Supra page 50.

That is at their market value (if they have one, if not at their actual value) on the first day of May, first, however, deducting from this market or actual value the assessed value of all real and personal property owned by the corporation, the value of all shares of stock owned by the corporation, and the value of State, United States, Federal Farm Loan Bank and all Joint Stock Land Bank bonds owned by the corporation more than ninety days before the assessing period.

It is respectfully submitted that the requirements of the Constitution, as to investment in bonds, stocks and joint stock companies being assessed at their true value in money is not met or complied with by an assessment at not the true value in money, but the true value ,that is what they will sell for,

after deducting the assessed value of all property, real and personal ,owned by the corporation whose stocks are being taxed.

It is respectfully submitted that, that, which is thus assessed as capital stock is in truth and in fact the intangible value of the franchise of the corporation.

The market value of the shares of stock applied to the whole of the capital stock is the value of the tangible and intangible property. Deducting from this aggregate value of the tangible and intangible property, the appraised value of of the real and personal estate and the non-taxable bonds, we have left the value of the franchise or intangible value, which is of course in and of itself property and subject to taxation.

The Supreme Court of the State, in Commissioners v. Tobacco Company, 116 N. C., 441, says:

"As to corporations, by all the authorities, it is in the power of the legislature to lay the following taxes, two or more of them, in its discretion, at the same time: (1) To tax the franchise (including in this the power to tax also corporate dividends) (2) The Capital Stock (3) The real and personal property of the corporations. This tax is imperative and not discretionary under the ad valorem feature of the constitution, (4) The shares of stock in the hands of the stockholder. This is also imperative and not discretionary."

In Pullen v., Commissioners, 152 N. C., 548-583 Manning, J., for the Court, says:

"It is likewise well settled by the language of our State Constitution, by many decisions of this Court, and of the Supreme Court of the United States, and now generally accepted law, that the property of a shareholder of a corporation in its shares of stock is a separate and distinct species of property from the property

whether real, personal or mixed, held and owned by the corporation itself as a legal entity. It would be useless to cite authority to support a proposition so well established and generally accepted."

That case was one where the statute required the bank to list for the shareholder the shares of stock owned by him, to pay the taxes assessed against the stock and deduct from dividends due the stockholder or otherwise collect from him; the question at issue was the right in assessing the value of shares of stock to deduct from such value the face amount of state bonds, which so provided on their face. The court held the deduction could be made. The point here raised was not raised or presented in that case.

The statute in this case, as to ordinary industrial corporations, does not require the owner to list the stocks at all.

The statute authorizes the shares of bank stock to be listed at their market value, less certain deductions, the court holding this to be valid upon the theory that the legislature may declare what is true value, or what that term means.

The statute, supra 51 authorizes or fixes the true value of the property of all corporations exercising the right of eminent domain (except railroad companies) as being the market value of the stocks of the company, plus the mortgage debts, if any.

The statute as interpreted as to railroads fixes their value at their investment account, or reproduction cost, or that sum upon which they are allowed, if they can, to earn 5½ per cent.

As to real estate, it appears from the evidence that as a result of the review of the valuation made in April, 1921, under the Act of 1921, that on the average it is assessed at 2-3 of its sale value.

This proportion of assessed to sales value differs in the several counties, ranging all the way from 23.10 per cent, in Jackson County and 35.91 per cent, in Wayne, to 90.06 per

cent in the adjoining county of Lenoir and 98.66 per cent, in Carteret County, divided from Lenoir by Craven.

This variation of values in the several counties does not materially harm any tax payer whose property is listed locally, provided the local assessors make their relative valuations fair in the several counties. The burden comes on that class of taxpayers whose property is assessed by the State Tax Commission at full value, and this full value certified to the several counties on a mileage pro rate. In that way, to illustrate by Wayne County, the property of Norfolk Southern, Atlantic Coast Line and Southern situate in that county is assessed at full value, while local real estate is assessed at one third, or slightly over.

We respectfully submit that there is no uniform rule as commanded by the constitution for the assessment of the property in the state.

The failure to adopt this uniform rule for assessing all property in the State violates plaintiff's constitutional rights for that under the Constitution, Article IX, Sec. 3, every county in the state is divided into school districts, in each of which a six months school must be maintained each year; the county commissioners are required to ascertain the amount of money necessary to support a school for six months, also to ascertain the amount of property in the country subject to taxation and levy such a rate as will produce the amount necessary to maintain the six months school: Consolidated Statutes, Sec., 5486. Therefore every dollar of property which the constitution requires to be listed, that is left off the tax list or not valued at its true value in money, directly increases the burdens of the other taxpayers.

These acts of the legislature, as interpreted by the Commissioner of Revenue, violates plaintiff's constitutional rights, for that they violate the State Constitution, being acts of the legislature they show a settled design and purpose to violate the State Constitution, to impose upon plaintiff an undue

burden of taxation and thereby violate the 14th Amendment to the Federal Constitution.

Louisville & N. R. R. v. Greene, 244 U. S. 522-524;
Raymond v. Chicago Union T. Co., 207 U. S. 20-41;
Cummins v. Merchants Nat. Bank, 101 U. S. 153;
Keith v. Lockhart, 171 N. C., 451 457.

Wherefore it is respectfully submitted that upon the admitted facts and the uncontradicted evidence, it appears:

1. That the assessors have not followed the rule laid down in the Constitution of valuing all property by one uniform rule at its true value in money.

2. That they have, in valuing plaintiff's property, imported values into the State.

3. That they have violated the uniformity clause of the State and Federal Constitutions.

4. That this has been done, not as matter opinion, as to values, but by the express command of the statutes of the state as interpreted.

5. That this shows a settled design to impose upon plaintiff's and other railroads an undue and unjust burden of taxation.

6. That under the decisions, both State and Federal, this is an illegal decision.

INJUNCTIVE RELIEF

The bill, sections 19 and 20, avers that the failure of the Commissioner of Revenue (State Tax Commission) to observe the plain mandate of the Constitution, and the statutes, results in valuing plaintiff's property at more than its true value in money, while other property in the State is assessed at less than its true value, throwing an undue burden of taxation on plaintiff, resulting in an illegal asessment, which the local taxing bodies are powerless to correct.

While an action at law may, under the statutes and decis-

ions of the State, be brought against a sheriff or local tax collector to recover an illegal tax when paid under protest, no such suit can be maintained, unless it is shown that the illegality arises, (not out of an erroneous assessment, but), solely because either (1) an error is made in the calculation of the tax, or (2) the rate of tax is illegal.

Guano Co., v. New Bern, 172 N. C., 258, where the Court says:

> "It is therefore incumbent upon the plaintiff, in order to set out a good cause of action, to allege that the tax it seeks to recover was levied upon a valuation greater than that fixed by the county authorities; that is to say, that the tax plaintiff has been forced to pay was greater than it would have been if correctly computed at the legal rate on the adjudged valuation. It is the difference that plaintiff would be entitled to recover. Pickens v. Smith, 112 N. C., 699."

Therefore Consolidated Statutes, Sec. 7979 has no application to a suit to test the validity of an assessment.

There is no board of review which can review an assessment originally made by the State Tax Commission, or Commissioner of Revenue, the only appeal from his decision or right of review at the time this action was instituted was in the matter of the valuation of the capital stock of corporations under Chapter 38, Public Laws, 1921, Sec., 43.

It is true that at a special session held in December, 1921 after this suit had been instituted, railroads were given the same right of appeal.

Even though it be conceded that Consolidated Statutes, Sec. 7979, Appendix, page 75 applied in order to recover back the taxes paid, plaintiff would then be compelled to bring at least sevent-five or more suits to recover back the illegal taxes.

That equity has jurisdiction to prevent a multiplicity of suits is too well settled to need the citation of authority.

Under the decisions, supra, a court of equity will enjoin the collection of a tax upon an illegal assessment, unless there is a plain and adequate remedy at law.

In this case there is no remedy whatever.

It may be suggested here, as it was in the Court below, that the granting of an interlocutory injunction is a matter of discretion, that the Court below declined as a matter of discretion to grant an injunction, pendente lite.

In this case the only remedy sought is a final injunction if an injunction pendente lite be not granted, then the suit is terminated and at end, for in that case plaintiff will be compelled to pay the taxes, and the taxes once paid the suit terminates.

> Singer Mfg., Co. v. Wright, 141 U. S., 696;
> People of the State of California, v. San Pablo & Tulare R. Co., 149 U S., 308, 341.

Wherefore, it is respectfully submitted that the Court below erred in refusing to grant the motion for an interlocutory injunction as prayed.

W. B. RODMAN,
C. M. BAIN
JOHN M. ROBINSON,
W. B. RODMAN, Jr.
For Plaintiff Appellant.

APPENDIX

CONSOLIDATED STATUTES

Sec. 3515: PENALTY FOR FAILURE TO RECEIVE AND FORWARD FREIGHT TENDERED.

Agents or other officers of railroads and other transportation companies whose duty it is to receive freights shall receive all articles of the nature and kind received by such company for transportation whenever tendered at a regular depot, station, wharf or boat landing, and every loaded car tendered at a sidetrack, or any warehouse connected with the railroad by a siding, and shall forward the same by the route selected by the person tendering the freight under existing laws; and the transportation company represented by any person refusng to receive such freight shall forfeit and pay to the party aggrieved the sum of fifty dollars for each day such company refuses to receive such shipment of freight and all damages actually sustained by reason of the refusal to receive freight. If such loaded car be tendered at any siding or warehouse at which there is no agent, notice shall be given to an agent at the nearest regular station at which there is an agent that such car is loaded and ready for shipment.

CONSOLIDATED STATUTES

Sec. 7979: REMEDY OF TAXPAYER FOR UNAUTHORIZED TAX.

Unless a tax or assessment, or some part thereof, be illegal or invalid, or be levied or assessed for an illegal or unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part, nor to restrain the sale of any property for the nonpayment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taking of any personalty levied on by the sheriff to enforce payment of such

tax or assessment against the owner thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the sheriff; but if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city, or town, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city, or town for the amount so demanded, including in his action against the county both state and county tax; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose ,or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer.

CONSTITUTION OF NORTH CAROLINA

ARTICLE IV

Sec. 9: CLAIMS AGAINST THE STATE. The Supreme Court shall have original jurisdiction to hear claims against the state, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the general assembly for its action.

ARTICLE V

Sec. 3. TAXATION SHALL BE BY UNIFORM RULE AND AD VALOREM; EXCEPTIONS.

Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds stocks, joint-stock companies, or otherwise; and, also ,all real and personal property, according to its true value in money: Provided, notes, mortgages, and all other evidence of indebtedness given in good faith for the purchase price of a home, when said purchase price does not exceed three thousand dollars, and said notes, mortgages, and other evidence of indebtedness shall be made to run for not less than five nor more than twenty years, shall be exempt from taxation of every kind; Provided, that the interest carried by such notes and mortgages shall not exceed five and one-half per cent. The general assembly may also tax trades, professions, franchises, and income: "Provided, the rate of tax on incomes shall not in any case exceed six per cent and there shall be allowed the following exemptions, to be deducted from the amount of annual incomes, to-wit: for a married man with a wife living with him, or to a widow or widower having minor child or children, natural or adopted, not less than $2,000; to all other persons not less than $1,000, and there may be allowed other deductions (not including living expenses) so that only net incomes are taxed.

Sec. 6. TAXES LEVIED FOR COUNTIES.

The total of the state and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the general assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the state for the term required by article nine, section three, of the constitution: Provided, further, the state tax shall not exceed five cents on the one hundred dollars value of property.

REVENUE ACT, 1919 CHAPTER 90, PUBLIC LAWS, 1919

Sec. 3. RATE.

There shall be levied and collected annually an ad valorem tax of eleven and two-thirds cents for State purposes, four cents for pensions and thirty-two cents for public schools, making forty-seven and two-thirds cents on every one hundred dollars value of real and personal property in this State required to be listed in "An act to provide for the assessment of property and collection of taxes," subject to exemption made by law.

Sec. 77. PRIVILEGE TAX ON RAILROADS.

Every steam railroad company and every person or agency operating a steam railroad in this State shall, on or before the thirtieth day of July in each year, make and return to the State Auditor, in such form and upon such blanks as shall be furnished by him, a true statement of the gross earnings of their respective roads for the preceding year ending the thirtieth day of June; of the number of miles of road operated by each such company or person, and the number of miles in the State, and the gross earnings per mile per annum during such year; which statement shall be verified by the oath of the secretary and treasurer of such companies, or of the person so operating such railroad, and the State Auditor shall certify said amount to the State Treasurer.

Sec. 78. RATE OF TAXATION.

The annual license tax for operating such railroads within the State shall be as follows: When gross earnings per mile are one thousand dollars or less per year, a tax of two dallars per mile; when gross earnings per mile exceed one thousand dollars per year but do not exceed two thousand dollars, a tax of four dollars per mile; when gross earnings per mile exceed two thousand dollars per year, but do not exceed three thousand, a tax of six dollars per mile; when gross earnings per mile are in excess of three thousand dollars per

year and not over five thousand dollars per year, a tax of eight dollars per mile; when gross earnings exceed five thousand dollars per mile per year, a tax of ten dollars per mile. The tax imposed by this section shall be paid to the State Treasurer at the time of making the report provided in section seventy-seven. No county, city, or town shall be allowed to collect any tax under this section.

Section 829. That nothing in the nine preceding subsections of this act shall apply to banks, insurance companies, fraternal, beneficent associations, building and loan associations, railroad express, telephone or telegraph companies, or other corporations, upon which a frainchise tax may be levied in other sections of this act.

REVENUE ACT, EXTRA SESSION, 1920 CHAPTER 1, PUBLIC LAWS, EXTRA SESSION 1920

Section 2. That section two of chapter ninety of the Public Laws of one thousand nine hundred and nineteen (C. S., secs. 7769, 7770) entitled "An act to raise revenue" be repealed and the following substituted for section two of that act:

> Sec. 2. POLL AND PROPERTY TAX.—That no tax on property or polls shall be levied for the year one thousand nine hundred and twenty for the use of the State or for the State pension fund. There shall be levied and collected for the year one thousand nine hundred and twenty for the benefit of the State public school fund an *ad valorem tax of thirteen cents on every one* hundred dollars value of real and personal property in this State required to be listed by the revenue laws of the State, and on each taxable poll or male between the ages of twenty-one and fifty years, except the poor or infirm whom the county commissioners may declare and record fit subjects for exempton, there shall be levied

and collected for the year one thousand nine hundred and twenty a tax of thirty-nine cents."

Sec. 3. That section three of chapter ninety of the Public Laws of one thousand nine hundred and nineteen (C. S. sec. 7770) be repealed and designated as "obsolete."

Section 7. That for the purpose of providing additional revenue for the State in lieu of *ad valorem* tax on property heretofore levied by the State, the following taxes shall be levied and collected in the manner now provided by law for collection of similar taxes:

Sec. 7 (d). PRIVILEGE OR FRANCHISE TAX ON RAILROADS.

That sections seventy-seven and seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be repealed (C. S., 7856-7857) and that section eighty-two (9) (C. S., 7861) of chapter ninety of the Public Laws of one thousand nine hundred and nineteen be amended by striking out of the third line of the said subsection the word "railroad;" that section eight-two of chapter ninety (C. S., 7861) of the Public Laws of one thousand nine hundred and nineteen be amended by inserting a new subsection to be designated as section eighty-two (6½) as follows:

"Section 82 (6½). RAILROADS.—Every railroad company doing business in this State shall, on or before the first day of October, one thousand nine hundred and twenty, and on or before the thirtieth day of July annually thereafter, make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such infromation as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege

tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for *ad valorem* taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one (0.1 per cent) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for on or before the first day of October, one thousand nine hundred and twenty, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city, or town shall be allowed to collect any taxes under this section. The tax imposed by this section shall be in addition to the tax imposed by section seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen (C. S., 7857) prior to the ratification of this act, only in so far as the tax imposed by this section exceeds the tax imposed by section seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen, and if the tax imposed by section seventy-eight of chapter ninety of the Public Laws of one thousand nine hundred and nineteen for the year one thousand nine hundred and twenty have been paid by any railroad company such amount so paid shall be credited on the tax imposed by this section."

CHAPTER 34,—AN ACT TO RAISE REVENUE

Sec. 3. STATE TAXES.

No tax on any property in the State shall be levied for any of the uses of the State Government. The taxes hereinafter levied in this act are for the expenses of the State Government the appropriations of its educational, charitable, and penal institutions, pensions for Confederate soldiers and widows, the interest on the debt of the State, as equalizing fund for public schools, and other specific appropriations made by law, and shall be collected and paid into the general fund of the State Treasurer.

Sec. 4 CORPORATION TAXES PAYABLE TO STATE TREASURER.

Every corporation, joint-stock association, limited partnership, or company whatsoever, from which a report is required by law to be made to the Corporation Commission, shall be subject to and pay to the State Treasurer annually the franchise tax imposed by section 82 of this act; it shall be the duty of the State Auditor to mail to every such corporation a statement of the amount of such taxes, which statement shall contain a copy of so much of this section as relates to penalty as notice of penalty for failure to pay said taxes; and it shall be the duty of the treasurer or other officer having charge of any such corporation, joint-stock association, or limited partnership upon which a tax is imposed to transmit the amount of the tax to the State Treasurer within thirty days from the date of such notice. If such tax is not paid by the first day of November, it shall be the duty of the Auditor to send, not later that November fifteenth, final notice to such delinquent corporation that penalty will be imposed if payment is not made as required by this section. If the said tax is not paid by the first day of December next following, the State Treasurer shall certify to the State Auditor a complete list of all such taxes due and

unpaid. The State Auditor shall add ten per centum to such taxes, and return to the State Treasurer, charging the State Treasurer with the amount so added, and the State Auditor shall thereupon certify the same with such percentage added to the sheriff or tax collector of the county in which such delinquent corporation has its principal office, and charge such sheriff or tax collector with the amounts so certified. Such certificate by the State Auditor to the sheriff or tax colector in any county shall have the same force and effect as a judgment and execution against the real and personal property of such corporation as is given by Machinery Act for the collection of other taxes, and it shall be the duty of the sheriff or tax collector to proced to collect same, by levy, advertisement, and sale, in the same manner as provided by law for the collection of other taxes The sheriff or tax collector shall be allowed the same fees for collecting, or for levy, advertisement and sale, as provided by law for collection of other taxes, the same to be allowed in settlement with the State Treasurer, and in cases where the sheriff, after due diligence, is unable to collect the tax he shall be allowed credit for said amount in his final settlement for said years. The provisions of this section shall apply to any taxes payable directly to the State Treasurer that are due and unpaid at the time of the passage of this act, and such taxes may be certified for collection at any time: PROVIDED, that for the purposes of this act interests in limited partnerships or joint-stock associations shall be deemed to be capital stock, and taxed accordingly. Individual stockholders in any corporation, joint-stock association, limited partnership, or company paying a tax on its capital stock shall not be required to pay any tax on said stock or list the same, nor shall corporations legally holding capital stock in other corporations in this State, upon which the tax has been paid by the corporation issuing the same be required to pay any tax on said stock or list the same. Nor shall any individual stockholder of any foreign corporation be required to list or pay taxes on

any share of its capital stock if two-thirds in value of its entire property is situated and taxed in the State of North Carolina, or if such corporation has tangible assets within this State assessed for taxation at a value exceeding the par value of the total stock owned by citizens of this State, and the said corporation pays franchise tax on its entire issued and outstanding capital stock at the same rate as paid by domestic corporations.

Sec. 79. PRIVATE TAX ON EXPRESS COMPANIES. That every express company doing business in this State shall, on or before the thirtieth day of July in each year, make and return to the Corporation Commission a statement of the total number of miles of railroad lines over which such express company operates in this State; the said Corporation Commission shall certify the same to the State Treasurer as a basis for assessment and collection of the tax levied in the following schedule:

Sec. 79 (a). RATE OF TAXATION.

Each express company doing business in this State shall pay to the State Treasurer an annual privilege or license tax as follows: Any such company which earned from its express transportation business not more than six per cent upon its capital invested the previous calendar year shall pay at the rate of five dollars ($5) per mile. Any such company which so earned as much as seven per cent and less than eight per cent upon its capital invested the previous calendar year shall pay at the rate of six dollars ($6) per mile. And any such company which so earned eight per cent or more upon its capital invested the previous calendar year shall pay at the rate of seven dollars ($7) per mile. Any such company not having had previous earnings shall pay at the rate of five dollars ($5) per mile: PROVIDED, that no county shall levy any tax under this section. There may be levied and collected by every incorporated municipality in the State of

North Carolina from each express company, for the privilege of doing business within the municipal limits of said incorporated municipalities, a privilege or license tax, to be computed and based on the population of said municipalities, as follows: Incorporated municipalities having a population of five hundred people or less, five dollars per annum; incorporated municipalities having a population of five hundred people and not eveeeding one thousand people, ten dollars per annum; incorporated municipalities having a population of one thousand and not exceeding five thousand people, twenty dollars per annum; incorporated municipalities having a population of five thousand and not exceeding ten thousand people,, thirty dollars per annum; incorporated municipalities having a population of ten thousand and not exceeding twenty thousand people, fifty dollars per annum; incorporated municipalities having a population of exceeding twenty thousand people, seventy-five dollars per annum; PROVIDED FURTHER, that nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce, or upon any business transacted for the Federal Government.

Sec. 80. TELEGRAPH COMPANIES.

Each and every person, firm, or corporation operating within this State the apparatus necessary to communication by telegraph shall pay, for the privilege of engaging in such business, to the State an annual license tax of five dollars per mile for each pole mile of such telegraph line owned or operated by them within the State, as shown by report of such telegraph company to the Tax Commissioners under section forty-eight of the Machinery Act, and it shall be the duty of the Tax Commissioners to certify to the State Auditor the number of miles of line operated by such telegraph company in this State, and it shall be the duty of the State Treasurer to collect the tax as herein levied upon the basis of mileage as reported: PROVIDED, that nothing in this section shall

be construed to authorize the imposition of any tax upon interstate commerce or upon any business transacted for the Federal Government: PROVIDED, that no county shall levy any additional tax under this section, but towns may levy the following taxes: Those having a population of one thousand not exceeding five thousand, ten dollars; from five thousand to ten thousand, fifteen dollars; from ten thousand to twenty thousand, twenty dollars; over twenty thousand, fifty dollars.

Section 82 (3½). That where a report required to be made under the provisions of this section to the State Tax Commission by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which report is made, or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under the rules laid down in section 82 of this act to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which such report is made, the measure of the extent to which the corporate franchise of any such corporation is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation in this State.

Sec. 82 (6½). RAILROADS.

Every railroad company doing business in this State shall annually on or before the thirtieth day of July make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such raiload

company as a franchise of privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one per cent (0.1per cent) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city or town shall be allowed to collect any taxes under this section.

Sec. 82 (11). Upon the payment of the tax or fee provided for in this act to the Treasurer of State, the Treasurer of State shall make out and deliver to the public utility or corporation so paying a receipt for the payment by such public utility or corporation of the tax or fee herein provided for.

Sec. 82 (12). The fees, taxes, and penalties required to be paid by this act shall be the first and best lien on all property of the public utility or corporation, whether such property is employed by the public utility or corporation in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the creditors and stockholders thereof.

Sec. 82 (17). If a corporation, wherever organized, required by the provision of this act to file any report or return or to pay any tax or fee, either as a public utility or as a corporation, organized under the laws of this State, or as a foreign corporation for profit doing business in this State and

owning and using a part or all of its capital or plant in this State, or as a sleeping-car, freight line, or equipment company, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this act for making such report or return or for paying such tax or fee, the Commission shall certify such fact to the Secretary of State. The Secretary of State shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this State by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of any such foreign corporation to do business in this State, by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The Secretary of State shall immediately notify such domestic or foreign corporation of the action taken by him.

MACHINERY ACT, 1921

CHAPTER 38,—PUBLIC LAWS OF N. C., 1921

Sec. 21. REAL PROPERTY TO BE ASSESSED AT ITS TRUE VALUE IN MONEY.

Real property shall be valued by the township list-taker and assessor, either from actual view or from the best information that the township list-taker and assessor can practically obtain, according to its true value in money. In determining the value the township list-taker and assessor shall consider as to each piece its advantage of location, quality of soil, quantity of standing timber, water privileges, water-power, mines, minerals, quarries, or other valuable deposits known to be available therein, and their value.

Sec. 22. PERSONAL PROPERTY TO BE ASSESSED AT ITS TRUE VALUE IN MONEY.

All articles of personal property shall, as far as practicable, be value by the list-takers and assessors according to their true

value in money; and after arriving at the total valuation of all articles of personal property which he shall be able to discover as belonging to any person, if he or they have sufficient evidence upon which to form a belief that such person has other personal property, consisting of money, credits, debts due or to become due, or any other thing of value liable, he, they, or the board of commissioners shall have power to take such action as may be necessary to get said property on the tax lists.

Sec. 23. DEFINING ACTUAL VALUE IN MONEY.

The intent and purpose of the tax laws of this State is to have all property and subjects of taxation assessed at their true and actual value in money, in such manner as such property and subjects are usually sold, but not by forced sale thereof, and the words "market value" or true value," whenever in the tax laws, shall be held and deemed to mean what the property and subjects would bring at cash sale when sold in such manner as such property and subjects are usually sold.

Sec. 28 (a). COUNTY BOARDS TO REVIEW VALUATION OF REAL ESTATE.

The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen (any vacancy which may have occurred to be filled by appointment of the board of county commissioners), shall meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of real property as heretofore appraised and assessed in the county as a whole is in excess of the fair value of such property at the time of meeting of such board. The chairman of the board of county commisioners shall be the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be the secretary of the said board. The said board shall make proper inquiry and investigation into the existing values of real property as compared with the assess-

ed and appraised values thereof in the several cities, towns, and townships of the county; and if it shall find that the assessed value of such property is in excess of the actual value, it shall find the average percentage of such excess in the county as a whole, or in the several cities, towns, and townships, and shall report its finding so made to the State Tax Commission not later than the twentieth day of April, one thousand nine-hundred and twenty-one. The values so reported shall be the values at which the property shall be assessed for taxation, unless and until the same have been changed and revisal by the State Tax Commission and certified to the board of county commissioners of such county, which shall be done not later than the first day of July, one thousand nine hunded and twenty-one.

Sec. 28 (g). Any taxpayer owning property assessed originaly by the State Tax Commission may make application to the State Tax Commission for a review of the assessment of its property in the same manner herein provided for complaint by property owners before the county boards, and the State Tax Commission may hear and determine such complaints.

Sec. 42. BANK TAXATION.

The value of such shares of stock of banks shall be determined as hereinafter in this section provided. Every bank, banking association, or savings institution (whether State or National), shall list its real estate in the county, city, or town in which such real estate is located, for the purposes of county and municipal taxation. Every such bank, banking association, or savings institution shall, during the month of May, post anually with the State Tax Commission, in the name of and for its shareholders, all the shares of its capital stock whether held by residents or nonresidents, as its market value on the first day of May, or, if it have no market value, then at its actual value on that day, from which market or actual value shall be deducted the assessed value of the real and personal property which such bank, banking association, or savings institution shall have listed for taxation in the county or counties wherein such real

and personal estate is located. The actual value of such shares, where such shares have no market value, shall be ascertained by adding together the capital stock, surplus, and undivided profits, and deducting therefrom the amount of real and personal property owned by said institution on which it pays tax, and dividing the net amount by the number of shares in said institution. Insolvent debts due said institution may be deducted from the items of undivided profits or surplus, if itemized and sworn to and forwarded to the State Tax Commission by the cashier of such institution. There shall also be deducted investments by such banks in bonds of this State, when such investments are made from the surplus of such banks. To be entitled to this deduction it must be shown by the reports of such banks that the bonds were purchased and paid for in full at least ninety days before the first day of the current year. If the State Tax Commission shall have reason to believe that the market or actual value as given in is not its true value, it shall ascertain such true value by such examination and investigation as to it seems proper, and change the value as given in to such an amount as it ascertains the true value to be, which action on the part of the State Tax Commission may be reviewed by the Superior Court by an action brought against the State Tax Commission in its official capacity by the party aggrieved. But no action shall lie until all taxes admitted by such aggrieved party to be due shall have been paid or tendered. The value of the capital stock of all such banks, as found by the State Tax Commission, shall be certified to the county and city in which the bank is located, except that as to banks having one or more branches the State Tax Commission shall make an allocation of the value of the capital stock as between the parent and branch banks in proportion to the deposits of the parent and branch banks and certify the allocated values so found to the counties and cities in which the parent and branch banks are located. The taxes so assessed upon the shares of any such bank, company, or association shall be paid by the cashier, secretary, treasurer, or proper accounting officer thereof, and in the same

manner and at the same time as other taxes are required to be paid in such county, special school district or city; in default of such payment such cashier, secretary, treasurer, or other accounting officer as well as such bank, company, or association shall be liable for such taxes, and in addition, for a sum equal to ten per centum thereof. Any taxes so paid upon any such shares, may, with the interest thereon, be recovered from the owners thereof by the bank, company, association, or officer paying them, or may be deducted from the dividends accruing on such shares. The taxation of shares of any such bank, banking association, or savings institution shall not be at a greater rate than is assessed upon other moneyed capital in the hands of indiivdual citizens of this State, whether such taxation is for State, county, school, or municipal purposes.

Sec. 43. REPORTS FROM CORPORATIONS.

Hereafter, except in the case of such corporations as are especially mentioned by name in other section of the Revenue Act, and required to make statements in other forms, it shall be the duty of the president, chairman, or treasurer of every corporation having capital stock, every joint-stock association, or limited partnership whatsoever, now or hereafter organized or incorporated by or under any law of this State, to make a report in writing to the State Tax Commission on or before the first day of July of each year, stating specifically:

1. Total authorized stock.
2. Total authorized number of shares.
3. Number of shares of stock issued.
4. Par value of each share.
5. Amount paid into the treasury on each share.
6. Amount of capital paid in.
7. Amount of capital on which dividend was declared.
8. Date of each dividend during said year ending with the first of May.
9. Amount of each dividend during the year ending with the first Monday in said month.
10. Highest price of sales of stock between the first and

fifteenth days of May; highest price of sale of stock during the year aforesaid; average price of sales of stock during the year.

And in said report one of the following named officers of such corporation, limited partnership, or joint-stock asociation, namely the president, chairman, secretary, or treasurer, after being duly sworn or affirmed to do and perform the same with fidelity and according to the best of his knowledge and belief, shall estimate and appraise the capital stock of said company at its actual value in cash on the first day of May, after deducting therefrom the assessed value of all real and personal estate upon which the corporation pays tax, and the value of the shares of stock legally held and owned by such corporation in other corporations incorporated in this State and paying taxes on its capital stock in this State, as indicated or measured by the amount of profit made, either declared in dividends or carried into surplus or sinking fund; and when the same shall have been so truly estimated and appraised they shall forthwith forward to the State Tax Commission a certificate thereof, accompanied by a copy of their said oath or affirmation, signed by them and attested by a magistrate or other person duly qualified to administer the same. Every such corporation may also show a deduction from the total amount of its capital stock, surplus, and undivided profits, the total amount of its actual investment in bonds of this State, and of the United States, and of the Federal Farm Loan Bank, and bonds of the Joint-stock Land Bank, which have been held as a continuing investment by such corporation for a period of not less than three months prior to the day on whic such report is required by law to be made: *Provided,* that if the State Tax Commission or either of them is not satisfied with the appraisement and valuation so made and returned, they are hereby authorized and empowered to make a valuation thereof, based upon the facts contained in the report herein required or upon any information within their possession, and to settle an account on the valuation so made by them for taxes, penalties, and interest due the State thereon, of which such settlement immediate

notice shall be given to such corporation by said State Tax Commission, with the right to the company dissatisfied with any settlement so made against it to appeal to the Superior Court in term-time of the county in which such company has its principal place of business in this State, and thence to the Supreme Court of this State; but before such company shall be allowed to exercise the right of appeal it shall, within twenty days after notice of such settlement, file with the State Tax Commission exceptions to the particulars to which it objects, and the grounds thereof, and said State Tax Commission shall hear said exceptions, after ten days notice of such hearing given by said State Tax Commission to said company; and if they shall overrule any of said exceptions, then such company, if it desires to appeal to said Superior Court, shall, within ten days thereafter, give notice to aaid State Tax Commission of such appeal to said Superior Court, and the State Tax Commission shall thereupon transmit to said Superior Court a record of said settlement, with the exceptions of the company thereto, and all decisions thereon, and all papers and evidence considered in making said decision. The said cause shall be placed on the civil docket of said Superior Court, and shall have precedence of all other civil actions, and shall be tried under the same rules and regulations as are prescribed for the trial of other civil causes. The cause shall be entitled, "State of North Carolina, on the relation of State Tax Commission against such company." Either party may appeal to the Supreme Court from the judgment of the Superior Court under the same rules and regulations as are prescribed by law for other appeals, except that the State of North Carolina, if it shall appeal, shall not be required to give an undertaking or make any deposit to secure the cost of such appeal; and the Supreme Court may advance the cause on their docket so as to give the same a speedy hearing; and in the event of the neglect or refusal of the officers of any corporation, company, joint-stock association, or limited partnership for a period of sixty days to make the report and appraisement to the State Tax Commission as here-

in provided, it shall be the duty of the State Tax Commission to estimate a valuation of the capital stock of such defaulting corporation, company, joint-stock association, or limited partnership, and settle an account for taxes, penalty, and interest thereon, from which settlement an appeal may be made to the Superior Court of the county in which the corporation has its principal place of business. The State Tax Commission is forbidden to divulge or make public any report of a corporation required to be made to it by this section. The State Tax Commission shall prepare and keep a record book, upon which it shall enter a correct list of all the corporations and banks which it has assessed for taxation, and said record shall show the assessed valuation placed upon same by it: *Provided*, that the reports required to be made by this section may be examined, upon application, by the solicitor of the State for the district in which the corporation has its principal office, or in any investigation by the board of commissioners of a county the reports of corporations having their principal office in such county may be examined upon order of the board of county commissioners or their authorized representative.

Sec. 57. MANNER OF ASSESSMENT.

Said State Tax Commission shall first ascertain the true cash value of the entire property owned by the said association, company, copartnership or corporation from said statements or otherwise for that purpose, taking the aggregate value of all the shares of capital stock, in case shares have a market value, and in case they have none, taking actual value thereof or of the capital of said association, company, copartnership, or corporation in whatever manner the same is divided, in case no shares of capital stock have been issued: PROVIDED, HOWEVER, that in case the whole or any portion of the property of such association, company, copartnership, or corporation shall be encumbered by a mortgage or mortgages, such board shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock, or to the value of the capital in case there

should be no such shares, the aggregate amounts of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such association, company, copartnership, or corporation. Such State Tax Commission shall, for the purpose of ascertaining the true cash value of property within the State of North Carolina, next ascertain from such statements or otherwise the assessed value for taxation, in the localities where the same is situated, of the several pieces of real estate situated within the State of North Carolina, and not specifically used in the general business of such associations, companies, copartnerships, or corporations, which assessed value for taxation shall be by said board deducted from the gross value of the property as above ascertained. Said State Tax Commission shall next ascertain and assess the true cash value of the property of the associations, companies, copartnerships, or corporations within the State of North Carolina by taking as a guide, as far as practicable, the proportion of the whole aggregate value of said associations, companies, copartnerships, or corporations as above ascertained, after deducting the assessed value of such real estate without the State which the length of lines of said associations, companies, copartnerships, or corporations, in the case of telegraph and telephone companies, within the State of North Carolina, bears to the total length thereof, and in the case of express companies and sleeping-car companies the proportion shall be the proportion of the whole aggregate value, after such deduction, which the length of lines or routes within the State of North Carolina bears to the whole length of lines or routes of such associations, companies, copartnerships, or corporations, and such amount so ascertained shall be deemed and held as the entire value of the property of said associations, companies, copartnershaps, or corporations within the State of North Carolina. From the entire value of the property within the State so ascertained there shall be deducted by the commissioners the assessed value for taxation of all real estate, struc-

tures, machinery, and appliances within the State, and subject to local taxation in the counties as hereinbefore described, in sections fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, and fifty-six of this act, and the residue of such value so ascertained after deducting therefrom the assessed value of such local properties, shall be by said board assessed to said association: PROVIDED, the State Tax Commissioners shall also assess the value for taxation of all structure, machinery, appliances, pole lines, wire and conduit of telephone and telegraph companies within the State subject to local taxation, but land and buildings located thereon owned by said companies shall be assessed in like manner and by the same taxing officials as though such property was owned by individuals in this State.

Sec. 61. RAILROADS.

The commissioners selected from time to time under authority to establish the North Carolina State Tax Commission shall constitute a board of appraisers for railroad, canal, and steamboat companies, and other companies exercising the right of eminent domain.

Sec. 62. RAILROADS.

The president, secretary, superintendent, or other principal accounting officed within this State, of every railroad, telegraph, telephone, street railway company, whether incorporated by the laws of this State or not, shall, at such date as real estate is required to be assessed for taxation, return to the said commission for assessment and taxation, verified by the oath or affirmation of the officer making the return, all the following described property belonging to such corporation within this State, viz: The number of miles of such railroad lines in each county in this State, and the total number of miles in this State, including the roadbed, right of way, and superstructures thereon, main and sidetrack depot buildings and depot grounds, section and tool houses, and the land upon which situated and necessary to their use; water stat-

ions and land, coal chutes and land, and real estate and personal property of every character necessary for the construction and successful operation of such railroad, or used in the daily operation, whether situated on the charter right of way of the railroad or on additional land acquired for this purpose, except as provided below, including, also, if desired by the State Tax Commission, Pullman or sleeping cars or refrigerator cars owned by them or operated over their lines: PROVIDED, HOWEVER, that all machine and repair shops, general office buildings, storehouses, and contents located outside of the right of way, and also real and personal property other than the property as returned above to the State Tax Commission, shall be listed for purposes of taxation by the principal officers or agents of such companies with the list-takers of the county where the real and personal property may be situated in the manner provided by law for the listing and valuation of real and personal property. A list of such property shall be filed by such company with the State Tax Commission. It shall be the duty of the register of deeds, if requested so to do by the State Tax Commission, to certify and send to the said commission a statement giving a description of the property mentioned in the foregoing proviso, and showing the assessed valuation thereof, which value shall be deducted from the total value of the property of such railroad company as arrived at by the commission, in accordance with section sixty-six, before the apportionment is made to the counties and municipalities. The registers of deeds shall also certify to the commission the local rate of taxation for county purposes as soon as the same shall be determined, and such other information obtained in the performance of the duties of their office as the said commission shall require of them; and the mayor of each city or town shall cause to be sent to the said commission the local rate of taxation for municipal purposes.

Sec. 62 (a). RAILROAD COMPANIES REQUIRED TO FILE MAPS ETC.

Section 62a. *Railroad Companies required to file maps, etc.* Every railroad company operating in this State shall also be required to file with the State Tax Commission a map or blueprint showing the location within the corporate limits of every incorporated city or town of its main line of road, and its length, together with location of its right of way, not exceeding one hundred feet in width, and the location and value of all real estate owned by any such company within the limits of any such city or town, and not included in the right of way so designated. Every such company shall also report the value of any and all buildings and structures within the limits of any such city or town, whether on or off its right of way, and the commission shall find the value of all such real estate, buildings, and structures, and shall certify to such city or town the value of same, in addition to the value per mile of so much of its main line as may be located within such city or town, for *ad valorem* taxation.

Sec. 63. RAILROADS.

The movable property belonging to a railroad company shall be denominated for the purpose of taxation "rolling stock." Every person, company, or corporation owning, constructing, or operating a railroad in this State shall, in the month of May, annually return a list or schedule to the State Tax Commission, which shall contain a correct detailed inventory of all the rolling stock belonging to such company, and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping cars and dining cars, express cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars, and all other kinds of cars, and the value thereof, and a statement or schedule, as follows:

(1) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (2) the

amount of capital stock paid up; (3) the market value, or if no market value, then the actual value of shares of stock; (4) the length of line operated in each county and total in the State; (5) the total assessed value of all tangible property in the State; (6) and, if desired, all the information heretofore required to be annually reported by section five thousand two hundred and ninety-one of the Revisal. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the commission, and with reference to amounts and value on the first day of May of the year of which the return is made.

Sec. 64. TANGIBLE AND INTANGIBLE PROPERTY ASSESSED SEPARATELY.

(a) At such dates as real estate is required to be assessed for taxation, the said commission shall first determine the value of the tangible property of each division or branch of such railroad of rolling stock and all other physical or tangible property. This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property.

(b) They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property.

(c) The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an *ad valorem* taxation, and shall be apportioned in the same proportion that

the length of such road in each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certify, on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city, or town; all taxes due the State from any railroad company shall be paid by the treasurer of each company directly to the State Treasurer within thirty days after the first day of July of each year; and upon failure to pay the State Treasurer as aforesaid, he shall institute an action to enforce the same in the county of Wake or any other county in which such railroad is located, adding thereto twenty-five per centum of the tax. The board of county commissioners of each county through which said railroad passes shall assess against the same only the tax imposed for county, township, or other taxing district purposes, the same as is levied on other property in such county, township, or special taxing districts.

Sec. 65. RAILROADS.

When any railroad has part of its road in this State and part thereof in any other State, the said commission shall ascertain the value of railroad track, rolling stock, and all other property liable to assessment by the State Tax Commission of such company as provided in the next preceding section, and divide it in the proportion to the length such main line of road in this State bears to the whole length of such main line of road, and determine the value in this State accordingly: Provided, the commission shall, in valuing the fixed property in this State, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State than the average value for the entire system. On or

after the first onday in July the said commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The Said Commission may, if they see fit, require all argument and communications to be presented in writing.

Sec. 66. RAILROADS.

If the property of any railroad company be leased or operated by any other corporation, foreign or domestic, the property of the lessor or company whose property is operated shall be subject to taxation in the manner hereinbefore directed; and if the lessee or operating company, being a foreign corporation, be the owner or possessor of any property in this State other than that which it derives from the lessor or company whose property is operated, it shall be assessed in respect to such property in like manner as any domestic railroad company.

CHAPTER 96

(PUBLIC LAWS, EXTRA SESSION 1921)

AN ACT TO REFUND TAXES ILLEGALLY COLLECTED AND PAID INTO THE STATE TREASURY

The General Assembly of North Carolina do enact:

Section 1. Whenever taxes of any kind are or have been through clerical error, or misinterpretation of the law, or otherwise, collected and paid into the State Treasury in excess of the amount legally due the State, the State Auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certifiate of the head of the department through which said taxes were collected or his successor in the performance of the functions of that department, with the approval of the Attorney-General, and the Treasurer shall pay the same out of any funds in the treasury not otherwise appropriated: PROVIDED, demand is made

for the correction of such error or errors within two years from the time of such payment: PROVIDED FURTHER, that claims which have arisen within the five years next preceding the ratification of this act shall be presented and made within two years from the ratification of this act.

FILED
MAY 18 1922
WM. R. STANSBU
CLER

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1921.

No. 368

THE SOUTHERN RAILWAY COMPANY, *Appellant*,

vs.

A. D. WATTS, as Commissioner of Revenue of North Carolina.

No. 369

ATLANTIC & YADKIN RAILWAY COMPANY, *Appellant*,

vs.

A. D. WATTS, as Commissioner of Revenue of North Carolina.

No. 381

SEABOARD AIR LINE RAILWAY COMPANY, *Appellant*,

vs.

A. D. WATTS, as Commissioner of Revenue of North Carolina.

No. 382

ATLANTIC COAST LINE RAILROAD COMPANY, *Appellant*,

vs.

A. D. WATTS, as Commissioner of Revenue of North Carolina.

No. 383

NORFOLK SOUTHERN RAILROAD COMPANY, *Appellant*,

vs.

A. D. WATTS, as Commissioner of Revenue of North Carolina.

REPLY BRIEF FOR APPELLANTS IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDERS PENDING APPEALS.

S. R. PRINCE,
THOS. W. DAVIS,
MURRAY ALLEN,
JOHN M. ROBINSON,
Counsel for Appellants.

L. E. JEFFRIES,
GEO. B. ELLIOTT,
W. B. RODMAN,
Of Counsel.

PRESS OF THE BYDWARTH CO., WASHINGTON

IN THE

Supreme Court of the United States

October Term, 1921

IN EQUITY.

Nos. 927, 928, 960, 961, 962.

SOUTHERN RAILWAY COMPANY,
Appellant,

vs.

A. D. WATTS, ET AL.,
Appellees.

Reply Briefs of Appellants in Support of Motion for Temporary Restraining Order Pending Appeal to the Supreme Court of the United States Under Section 266 of the Judicial Code of the United States.

This reply brief is filed with permission of the Court, it appearing that the appellants had not previous to Monday, May 15th, the date of submission of said motion, been served with or received a copy of the brief of appellees.

Appellants desire to assure the Court that they have no wish or purpose to hinder in the slightest

the early disposition of this case. The stay granted by the lower court would have expired on the fifteenth day of May, 1922. Appellant Southern Railway Company, in order to have its motion for stay in this court passed upon prior to May 15th, served copy of said motion on State's counsel on the twenty-seventh of April, notifying the State at the time that it would apply to this Honorable Court for the stay on May 1, 1922. It was at the suggestion of counsel for the State that the application for stay was postponed until May 15th upon the assurance that the present status would continue until this motion is passed upon by the Supreme Court of the United States. A similar agreement is a part of the record in each of the motions. This much is stated in order that the Court may know that the appellants are not too late in presenting this matter.

Appellees are correct in stating that the Three Judge Court denied the stay pending the appeal. The order of the Three Judge Court in denying the stay is as follows:

> "The Court, being of the opinion that the application to continue in effect the thirty-day stay granted March 18, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this Court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States, denies the application for continuance

of said stay until the appeal is decided by the Supreme Court of the United States."

From the foregoing it will be plainly seen that the Three Judges composing the lower court have particularly refrained from passing upon the merits of the motion for stay. All that was decided was that in the opinion of that court the motion for stay should be presented to the Supreme Court of the United States. It is a fact which can not and will not be denied that the members of that court individually expressed in the presence of counsel for both sides the view that the stay should be granted and held only that the application should be made to the Supreme Court of the United States.

Appellees, as was said in appellant's original brief, cite only one case in opposition to the granting of the motion and that is the case of L. & N. vs. Railroad Commission, 208 Fed. 29, at page 50, but as was said in the original brief (Southern Railway Appellant's brief, No. 927, page 9) the citation made by appellees is not the opinion of the court but is the concurring opinion of one judge, and the decree of the Court was to the contrary.

Appellees, page 6, state that the right of the plaintiff to recover taxes illegally paid is fully protected by the laws of North Carolina. In support of this, appellees cite an Act ratified December 19, 1921. It will be noted that the Act cited

refers only to taxes paid into the State Treasury. Those taxes in this case are the franchise taxes and the franchise tax is a small part of the total taxes involved in the litigation. That Act does not purport and it is not claimed that it covers taxes to be paid the counties, municipalities, road districts, special school districts, etc., and to these latter sub-divisions of the State the greater portion of the taxes involved in these cases will be paid. Furthermore, the Act of 1921 does not require the payment back, except upon the certificate of the head of the department through which the taxes were collected "with the approval of the Attorney General." It may or may not be possible to secure the certificate of the head of the department or the approval of the Attorney General. The State has not consented to be sued.

Appellees cite (p. 7) Section 7979 of the Consolidated Statutes of North Carolina as affording relief to appellants with respect to the taxes paid to counties, municipalities, special school districts, road districts, etc. Inadvertently the appellee has not quoted fully the section in question. That section reads as follows:

> "7979. *Remedy of taxpayer for unauthorized tax.* Unless a tax or assessment, or some part thereof, be illegal or invalid, or be levied or assessed for an illegal or unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part, nor to restrain

the sale of any property for the nonpayment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taxing of any personalty levied on by the sheriff to enforce payment of such tax or assessment against the owner thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the sheriff; but if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city, or town, for the benefit or under the authority or by request of the county, city or town for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city, or town for the amount so demanded, including in his action against the county both state and county tax; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer."

It will be plainly seen from the foregoing Act that the law of North Carolina authorized an injunction in a case of this kind. The Supreme Court of North Carolina in the case of Range Co. vs. Carver, 118 N. C. 328, held that the effect of this section was to give an additional remedy to contest the validity of a tax, leaving it to the discretion of the taxpayer to pay the tax and sue to recover it back or to proceed by injunction. This and many other cases following it clearly indicate that it is the policy of the State to permit an injunction of an illegal or invalid tax.

We respectfully say to the Court that the statement made in appellees' brief (p. 7):

> "In addition to the foregoing statutes, the Attorney General and other State officers, parties defendant to this suit, have guaranteed in behalf of the State and the other taxing officers to repay to the plaintiffs any tax the collection of which is by this motion sought to be restrained in case the Court should ultimately decide that such taxes were illegally or wrongfully collected."

is not of record in this case. We know of no such guaranty. We do not think that any State officer has the power to make the guaranty, and therefore submit that the Court should not heed that statement.

Appellees cite the case of State Railroad Tax Cases, 92 U. S. 575, at page 613. Appellants have

no quarrel with the citation or the case, but the Court's attention is specifically directed to the paragraph of the said decision immediately following the one quoted by appellees. That paragraph of the opinion sets forth the doctrine which we think applicable in this case, and is as follows:

> "In this latter case, this court, after commenting upon the necessary reliance of the State governments upon the prompt collection of the taxes for their support and maintenance, and the ill consequences of interference with their proceedings in that matter, says, 'No court of equity will, therefore, allow its injunction to issue to restrain their action, except where it may be necessary to protect the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to multiplicity of suits, or produce irreparable injury, or, when the property is real estate, throw a cloud upon the title of complainant before the aid of a court of equity can be invoked.' So, in the case of Hannewinkle vs. Georgetown, the court says, 'It has been the settled law of this country for a great many years, that an injunction bill to restrain the collection of a tax on the sole ground of the illegality of the tax cannot be maintained. There must be an allegation of fraud, that it creates a cloud upon the title, that there is apprehension of a multiplicity of suits, or some cause presenting a case of equity jurisdiction' 15 Wall. 548. We do not propose to lay down in these cases any absolute limitation of the

powers of a court of equity in restraining the collection of illegal taxes; but we may say, that, in addition to illegality, hardship, or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction, and that mere errors or excess in valuation, or hardship or injustice of the law, or any grievance which can be remedied by a suit at law, either before or after payment of taxes, will not justify a court of equity to interpose by injunction to stay collection of a tax" (92 U. S. 614).

The Supreme Court further held in the State Railroad Tax Cases that a clear case must be made for equitable relief before an injunction should issue.

It is shown, without contradiction, that the Southern Railway would have to bring to recover the taxes 160 separate suits; Atlantic & Yadkin 24 separate suits; Atlantic Coast Line 140 separate suits; Seaboard Air Line 99 separate suits; and the Norfolk Southern 83 separate suits. Therefore, the total number of suits that will be required to be brought by these appellants to recover the taxes if paid and held to be illegal will be 506. In addition to this, we say that in our opinion there is no means provided by law of forcing the repayment of the amount paid to the State direct, namely, the State franchise tax. The bills each further show that a cloud will be cast upon their property.

The "State Railroad Tax Cases" cited by appellees contains also a statement of the well recognized and eminently just rule of this Court that the taxpayers must pay that part of the tax which it can be seen from the face of the bill is due or which can be shown by affidavits to be due, and that the litigation should be over the contested portion of the tax. It was in recognition of this principle that appellants offered to pay to the State and the State accepted the payment under an agreement, approved by the three Judges, of taxes on the undisputed assessment. In the case of the Southern Railway Company the taxes already paid by Southern Railway Company under said agreement are sixty-one thousand dollars in excess of the total paid in 1920. The Atlantic Coast Line Railroad Company has already paid $92,990.00 more than it paid in the year 1920. The other appellants have also paid under the agreement in excess of the amount paid in 1920.

Appellants may not be able in this motion, due to inability to discuss the merits, to make it clear to the Court that they have been in fact discriminated against. Whenever a State passes an equalization law and it is claimed that under that all property in the State is brought up to 100 per cent and at the ensuing session of the legislature the State passes a law permitting county boards to *horizontally* reduce the assessments of real

property in their jurisdiction and the county boards in practically all of the counties through which these railroads run do make horizontal reductions ranging from 15 to 50 per cent, making no reduction in the property of the appellants because they do not make the assessment of the railroads, and the Commissioner of Revenue of the State acts, with others, as a board of equalization and approves the action of these county boards and permits those *horizontal* reductions to stand and declines to make any reduction in the real property of these railroads, then it is plain to all that the equalization which it was stated had been fairly made has been upset premeditatedly and the dislocation of values again restored and appellants are discriminated against. The burden thus put upon these railroads is magnified, in that, due to the reduction in the values in the counties of other property, the rates in those counties were raised from 12¼ to 84 cents per hundred dollars. In addition to this, the record shows without contradiction that other property generally in the State is assessed at 67 per cent of its sale value, while the State avers that appellant's property is assessed at true value, or 100 per cent. The result is plain. The railroads' value stays up and the tax rate is increased. The railroads are discriminated against. We claim that the scheme of the law itself seems to have contemplated such discrimination and that the plan has been carried out. It is a further fact

that what is termed a franchise tax is not a franchise tax, but is an additional property tax, and that law is invalid. In these cases we have shown this court, without contradiction, that unless the payment of the taxes is restrained, then the appeal allowed the appellants by the statute will be valueless. What appellants asked of the Court below was a restraint of the collection of the taxes until the case could be heard on its merits. The lower court denied that restraint. The statute gives appellants a direct appeal. If appellants pay the taxes there is no value to be derived from appealing the case. All that is asked of this Court is that the present status be maintained until this Court can hear our appeal, and we willingly consent that the causes be advanced so that the stay may be brief as is possible.

Respectfully submitted,

S. R. PRINCE,
THOS. W. DAVIS,
MURRAY ALLEN,
JOHN M. ROBINSON,
Counsel for Appellants.

FILED
NOV 18 1922
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

IN EQUITY No. 368.

SOUTHERN RAILWAY COMPANY,
Appellant,

vs.

A. D. WATTS, ET AL., Appellees.

REPLY BRIEF FOR APPELLANT.

S. R. PRINCE,
Counsel for Plaintiff.

L. E. JEFFRIES,
W. M. HENDREN,
C. O. AMONETTE,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

IN EQUITY No. 368.

SOUTHERN RAILWAY COMPANY,
Appellant,

vs.

A. D. WATTS, ET AL., Appellees.

REPLY BRIEF FOR APPELLANT.

One of plaintiff's contentions is that the Tax Commission, in assessing its property in 1920, and the Commissioner of Revenue, in declining to change the same on review in 1921, failed to follow the statutory method as set forth in Sections 64 and 65 of the Machinery Act, ratified March 10, 1919 (Chapter 92, Public Laws of North Carolina, 1919), and identical Sections of Machinery Act, 1921. The Defendants, in their brief, in effect confess and seek to avoid by saying (1) that the State Tax Commission in 1920 and the Commissioner of Revenue in 1921 made no assessment, and (2) that said Sections 64 and 65 did not have

to be complied with, because the Legislature made the assessment in 1920 under the Revaluation Act of 1919 and is bound by no method, and the "Commissioner of Revenue made no assessments in 1921 and will not make any until 1924, and that until that date he will never be under the requirement of following the statutory method of assessment set forth in Sections 64 and 65 of the Machinery Acts if they are still in effect." (Appellees' brief, p. 36.)

We think the State errs in saying the State Tax Commission in 1920 and the Commissioner of Revenue in 1921 made no assessment. Section 3 of the Revaluation Act provided, in part:

> "Sec. 3. The *assessment* made under the provisions of this Act shall not be used as the basis for computation of taxes unless and until the same has been approved by the General Assembly, etc." (Italics ours.)

It would appear from the foregoing that an assessment was in fact made, even though not to be used as a basis for computation of taxes until approved by the General Assembly. This is made certain when we read in Chapter 1 of the Laws of North Carolina, Extra Session, 1920, which is the law that approved the assessment, the following:

> "Section 1. That the assessment or valuation of property, made under provisions of chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen, is hereby approved by the General Assembly and adopted as the basis for the levy of tax rates by the State and by all subdivisions of the

> State for which taxes are levied for the year one thousand nine hundred and twenty, and the valuation of real property so fixed shall be adopted for the years one thousand nine hundred and twenty-one, one thousand nine hundred and twenty-two and one thousand nine hundred and twenty-three, except as such valuations may be hereafter changed according to law."

At a number of places in the answer Defendants refer to the fact that the State Tax Commission made the assessment for the year 1920. For instance, in Section 3 of the answer (page 36 of the record) the following occurs:

> "The State Tax Commission had made the assessment of railroad properties in North Carolina for taxation for 1920, and the said assessment had been approved by the General Assembly of North Carolina at the Extra Session of 1920, Chapter 1, and adopted as the basis for taxation for the years 1920 to 1923, inclusive."

Again, at page 52 of the record, Defendants say in their answer:

> "On the other hand, it is averred that the assessment made by the State Tax Commission in and for the year 1920 is and will be, except as reduced by the Commissioner of Revenue to correspond with reductions made on all other real property, the only assessment of property of railroads in North Carolina to be made until 1924."

It seems clear that Defendants are mistaken in saying that no assessment was made.

As to the second plea, we submit that Sections 64 and 65 do provide the method of arriving at the true value of railroads and should have controlled in the making of said assessments.

At the outset, permit us to say that the present position of Defendants that Sections 64 and 65 were not binding in making the assessments of 1920 and 1921 is an afterthought. It is being used for the purpose of detracting attention from the fact which has been conclusively shown that the State Tax Commission under the Revaluation Act of 1919, and the Commissioner of Revenue, in making the reassessment for which Plaintiff applied under Section 28(g), not only departed from the methods prescribed in Sections 64 and 65 but also used different methods in assessing the property of railroads in the same class. This afterthought is not borne out by their answer, which, in Section 5 (Record, page 37) not only admits the binding effect of Sections 64 and 65, but states that said Sections were followed, in this language:

> "*As required by Section* 64 *of the Machinery Act,* the State Tax Commission, in 1920, in determining the value of the tangible and intangible property of the plaintiff for purposes of taxation, gave due consideration to all those modes, methods and factors *therein* required to be considered and used. *And as further required by Section* 65 *of the Machinery Act,* the State Tax Commission gave due consideration to the character of the roadbed and fixed equipment of the plaintiff in North Carolina, to the number of miles of double track in the said State, to the amount of gross and net earnings per mile of road in the State, and to

all other factors which would give a greater or less value per mile of road in this State than the average value for the plaintiff's entire system." (Italics ours.)

If language means anything, Defendants here recognized that said Sections were binding on them.

This is further shown in paragraph (c) of Section 5 of the answer (record, p. 43) in the following language:

"In answer to the allegation on page 23 of the complaint 'that under no one of these accepted tests, viz., capitalization of earnings, and the market value of the stocks and bonds, is the true value of its property as much as the assessment herein complained of,' the defendants aver that the statutes of North Carolina *neither require nor permit that any one of the said tests be used exclusively.* On the other hand, the said statutes *require* that the value of railroad property for taxation be determined by application of the *several factors* and tests *hereinbefore* set forth and that no one of these alone would be an accepted or proper test or method of valuation." (Italics ours.)

In the face of this, how can an assessment made only by capitalizing the net earnings from State and interstate commerce within the State of North Carolina (the method the Tax Commission swore they followed [99]) be said to be compliance with Defendants' duty under the law, as interpreted by Defendants?

The history of Section 64 is correctly set forth

at page 9 of Defendants' supplemental brief in the lower court in the following language:

> "Section 64 of the Machinery Act of 1921, providing the method for assessment of intrastate railroads for ad valorem taxation, is in the same form in which it has appeared in machinery acts for more than twenty years. (See statute.)
>
> "Section 65 of that act, providing the method for the assessment of interstate railroads, is in virtually the same form in which it has appeared in each machinery act for more than twenty years.
>
> * * * * *
>
> "Thus for more than twenty years ad valorem taxes on railroads have been based on assessment of tangible properties, plus the intangible properties or franchise, and the only material change has been the adding of the proviso and the provision for hearing which are now a part of Section 65. The method prescribed has been virtually the same for twenty years."

The Revaluation Act (Chapter 84, Laws of 1919) contained the following as a part of Section 1:

> "that the said act (Chapter 234, Laws 1917) shall continue in full force and effect, except in so far as the said act may be revised and amended by this session of the General Assembly, and except in so far as it may be in conflict with the provisions of this act, and in all such cases where there may be such conflict the provisions of this act shall govern."

Sections 64 and 65 were contained in said Chapter

234 of the Laws of 1917, are not in conflict therewith and hence were in force.

Section 2 of the Revaluation Act provided that the purpose of the Act was that all property should be valued, in accordance with the rule laid down in the Constitution of the State, at its true value in money. Our contention is not contrary to that, but is that Sections 64 and 65 prescribed the rule for arriving at the true value of railroads.

Section 31 of the Revaluation Act applies to railroads. It provides that the State Tax Commission shall, as of the first of May, 1919, make a complete revaluation of the property of all railroad companies to be used as the basis for computing taxes for the years 1920 to 1923, inclusive, "such revaluation to be made in accordance with the general rule and intent and purpose of this act as to all other property." The purpose is contained in Section 2 of the Act referred to above. Section 31 then provided that the Commission should be furnished with the reproduction cost and with all other information theretofore required by Chapter 234 of the Laws of 1917, which law contained said Sections 64 and 65.

The Revaluation Act was ratified the 11th of March, 1919. The companion Act, ratified March 10, 1919, is Chapter 92 of said Acts, known as the Machinery Act of 1919. The latter Act contains Sections 64 and 65 with reference to the valuing separately of tangible and intangible property and providing the method of valuing railroads. That Act, it will be observed, was in force when the Revaluation Act (Chapter 84) was passed and ratified on the succeeding day, was not repealed

thereby, and provided the method to be pursued by the Tax Commission in valuing a railroad. We submit that Chapter 92 being in force, it was the evident intention of the lawmakers that the true value in money of railroads should be ascertained in accordance with the method set forth in said Chapter 92, as contained in Sections 64 and 65 thereof. If this is not correct, the Tax Commission had nothing to guide it in arriving at the true value. The two Acts should be construed together, which construction we feel the administrative body actually gave to the laws, as shown by their affidavit and by the answer of the Defendants in this case. We therefore say that Sections 64 and 65 applied to the revaluation assessment of 1920.

This brings us to the 1921 assessment. The Court will please bear in mind, as seen in Section 1 of the Act of 1920, supra, the valuation approved by the Legislature was to remain for the years 1921, 1922, and 1923, "except as such valuations may be hereafter changed according to law." The Legislature, at its January Session, 1921, enacted Chapter 38, being "An Act to Amend Chapter 92, Public Laws of 1919, in Relation to the Assessment of Property and Collection of Taxes." Bear in mind that Chapter 92 contained Sections 64 and 65. This Act authorized changes in said assessments in the following Sections:

Chapter 38 provided, in Section 28(a), that county boards might review the valuation of real estate in counties and if they found the assessed value of property in the county as a whole to be in excess of the true value they were authorized to make a percentage reduction in all real values in the county.

In Section 28(b) of said Chapter provision is made for specific complaints by any taxpayer of overvaluation of his real property, and if the county board found the property assessed in excess of the actual value of the property on the first of May, 1921, the property owner had the right to have the same reassessed.

Section 28(g) reads as follows:

> "Sec. 28(g). Any taxpayer owning property assessed originally by the State Tax Commission may make application to the State Tax Commission for a review of the assessment of its property in the same manner herein provided for complaint by property owners before the county boards, and the State Tax Commission may hear and determine such complaints."

It was under the foregoing Section that plaintiff made application for a review of its assessment. It was entitled under the plain language of the Act to have its property reassessed in the same manner as an individual might under Section 28(b).

The reassessment provided for in Section 28(b) as to the property of individuals, and in Section 28(g) as to the property of railroads, had to be made "according to law" in effect at the time of the reassessment. The law in effect for the purpose of arriving at the true value of railroad property at the time plaintiff made application for a review or reassessment of its property, and at the time such reassessment should have been made, is contained in Sections 64 and 65 of Chapter 38 of the Acts of 1921 just referred to. In making the

reassessment or in determining whether Plaintiff's property had been assessed in excess of its true value, the Commissioner of Revenue, who had been substituted for the State Tax Commission, as well as the railroad, was compelled to use the methods provided in said Sections 64 and 65 in arriving at the true value of Plaintiff's property. We do not think that the State can with reason contend that said Sections 64 and 65 do not apply to the action of the Commissioner of Revenue on its application for review for reassessment, or that such Sections do not furnish the method or methods that the said Commissioner of Revenue should follow on such review and reassessment. Evidently the Commissioner of Revenue thought that he had the power to make a reassessment and that he was bound by the method prescribed in Sections 64 and 65, because in the case of Norfolk Southern he made a reassessment, reducing that company's assessment from $27,034,168 to $22,840,932.30, being the cost of reproduction less depreciation.

Upon its application for a review and reassessment Plaintiff had the burden of showing the value of its property in accordance with all the methods prescribed in Sections 64 and 65. Plaintiff showed the value of its property in accordance with such methods, and by any or all those methods combined the showing made was that the value fixed under the Revaluation Act was in excess of the actual value and there was no showing to the contrary. The Revenue Commissioner declined to make any reduction. He thereby adopted the figures and with the figures the wrong method pursued by the State Tax Commission in 1920. This necessarily

follows because the value as arrived at in accordance with the methods prescribed in Sections 64 and 65 was different from that arrived at by the State Tax Commission in 1920. No section of any Act permitted the Tax Commission in 1920 to use the Investment Account, and so far as the Southern is concerned, use only capitalization of earnings within the State. The Tax Commission states that it was furnished the cost of reproduction as near as those figures could be ascertained, and they declined to use them. In 1921, however, the Commissioner of Revenue, as to one member of the class of railroads, that is, the Norfolk Southern, used a reproduction cost. This is discrimination of members of the same class and is held by this court to make any assessment void.

Raymond v. *Chicago Traction Co.,* 207 U. S. 20, 36.

There is one further thought in connection with Sections 64 and 65: If those Sections did not control the Tax Commission and the Commissioner of Revenue, what authority can they point to in the law for assessing separately the tangible and the intangible property? Notwithstanding the State now denies that those Sections were applicable, we find in Section 5 of the answer the following:

> "It is denied that the State Tax Commission or the Commissioner of Revenue has not advised the plaintiff of the separate amounts or values at which its tangible property and its franchise or intangible property were assessed for taxation. The sum of the values of the said tangible property and of the said franchise or intangible property is the basis of ad

> valorem taxation, and the plaintiff, as alleged in the complaint, has been informed of the separate and total assessments." (Record, p. 37.)

Is it not clear that said Sections applied and were used? Is it not further clear that they were compelled to be used in order to legally make an assessment under Section 82 (6½) of Chapter 1 of the Laws of 1920, which provides that every railroad company shall pay a privilege tax, the basis being as follows:

> "The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one (0.1%) per cent of *the value so ascertained* by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year."

The point made is that the franchise tax law levied a tax on an ad valorem value ascertained by arriving at the tangible and the intangible value. If the State is right that there was no such provision governing, then it had no basis for assessment of the franchise tax.

The State, having to its satisfaction estab-

lished that the assessment was made by the Legislature, proceeds to say that the assessment made by the Legislature can not be attacked as illegal because it says, "it is the author of law." The decisions quoted do not sustain this and no decision, we submit, can be quoted which will sustain this proposition. The State's power is very broad in the matter of taxation, but it is always subject to the restraints of the State and the Federal Constitution. If the State Constitution provides that all property shall be assessed at its true value and Plaintiff can show that its property is assessed in excess of true value, then the Act of the Legislature making the assessment is unconstitutional and to enforce such a law against Plaintiff denies to it the equal protection of the law afforded by the Federal Constitution.

Defendants contend:

> "The method is in the discretion of the Legislature. It has the power to approve any method which may have been used and if the board may have even directly violated a previously prescribed statutory method, the approval of its act by the Legislature purges it of any illegality." (Appellees' brief, p. 39.)

To begin with, this is an erroneous assumption, because the Legislature did not repeal the method of valuing a railroad. On the contrary, it enacted a law on the preceding day setting forth what method should be followed. But if we assume that the Legislature intended to ratify the assessment of railroads made without method or on a different method, still we say the above proposition of Defendants is unsound.

The Legislature, it is true, may prescribe a method, but that power is controlled by the limitations of the Federal Constitution and the State Constitution. If the Legislature prescribes a method for assessing railroads, each of those railroads is entitled to have its property under the law assessed in accordance with the method prescribed and in force at the time the assessment is made. Defendants admit this on page 38 of their brief, in which they say:

> "If the delegated power to assess is not exercised according to the method prescribed by the sovereign Legislature, then the assessment is not a *legal* assessment and the tax thereon is not a legal tax. This has nothing whatever to do with constitutionality."

Let us assume, which is in accordance with the facts, that the board valued railroads generally by use of their investment account and valued Plaintiff's railroad by capitalization of earnings. Can the Legislature ratify such an assessment and thereby shut off the question of constitutional violation? If Defendants' argument is sound, the Legislature could pass a law reading:

> "All Railroads Shall Be Valued for Assessment by Use of Their Investment Account, except the Southern Railway, Which Shall Be Valued for Assessment by Capitalization of Earnings."

We submit that such a law would fall, because the classification would be arbitrary and because there would be the lack of uniformity prescribed by the

North Carolina Constitution and to enforce such a law would deprive the Southern Railway of the equal protection of the law guaranteed it by the Federal Constitution.

Let us go one step further in the consideration of this matter. The Legislature, if Defendants are right, made the assessment of each individual parcel of property in the State. An individual owned a parcel of land which, we will say, it is admitted was valued in excess of its true value as required by the Constitution. Can it be said that because the Legislature ratified such an assessment that the individual is deprived of the protection given him by the Constitution to have his property assessed at true value and uniformly with other property? If such a proposition can be maintained, then the Legislature has set at naught the Constitutional provision.

The State contends that there is nothing in the pleadings which would raise any question of constitutionality of the assessments. The bill sets forth that Section of the North Carolina Constitution which provides that taxation shall be by uniform rule and that all property shall be taxed according to its true value in money (6). The bill sets forth the method prescribed by law for ascertaining the true value for railroad property (7). The bill avers that the assessment of Plaintiff's property for 1921 was in excess of the true value in money of said property (9). The bill sets forth the facts which show that the statutory method was not followed, and particularly sets forth that this was an interstate railroad and the division of the total value on a mileage basis, as provided in

Section 65, was not complied with (10-11). The bill sets forth that the Commissioner of Revenue followed the valuation found by the Interstate Commerce Commission for certain railroads in North Carolina and that in the assessment of Plaintiff's property they did not base the same on the reproduction cost, and thus violated the Uniformity Section of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States (14-15). The bill avers generally that said assessment (whenever made and by whomever made) was improperly made and was not according to law and was illegal (18).

It is submitted that this sufficiently sets up the unconstitutionality of the 1921 assessment and of the Act by which such assessment was made, assuming that such assessment was actually made by the Legislature. On page 43 of their brief, Appellees recognize this allegation of unconstitutionality. There it is said, "the second year, 1921, they all bring suits in the Federal courts to restrain their collection, *alleges* that said assessments are excessive and hence unconstitutional." Throughout the Bill of Complaint there are allegations as to the violations of both the Constitution of North Carolina and of the United States, and this particular one is referred to briefly for the purpose of showing that the contention of the Appellees that there are not proper allegations in the Bill of Complaint is without foundation.

Defendants argue at length that there was no allegation of deliberate, intentional, and systematic overvaluation. Defendants cite the law and cite

decisions supporting the following proposition:

> "The courts will not review a mere error of fact in assessment of property for taxation, where a lawful principle was followed and no fraud is charged." (Appellees' brief, p. 45.)

There is the crux of the matter. We contend that the averments above set forth the facts and the charge is that it was an illegal assessment, that an unlawful principle was followed in that the statutory method was entirely disregarded. The decisions are plain to the effect that you do not have to aver or prove systematic, deliberate, and intentional overvaluation when you show that the overvaluation is the result of pursuing a wrong principle.

L. & N. v. Greene, 244 U. S. 522, 536.

Defendants contend that Plaintiff is entitled to no relief because we were privileged to complain of these assessments before the Legislature. That is entirely theoretical. Defendants know that what the Legislature did was to approve in a general sense the assessments made, and no particular taxpayer would have been heard who attempted to show to the Legislature that his individual property was overassessed. Again we say, is an individual taxpayer, whose property is admittedly in excess of true value to be bound because the Legislature approved the assessment? In addition, the Tax Commission assumed jurisdiction to hear Plaintiff, but did not hear, and we paid the taxes for 1929 under protest.

Defendants state that in 1927 each of the ends petitioned the Commissioner of Revenue for a re-

hearing and review and were given a rehearing; that on the rehearing one road was reduced four million dollars; and that the Commissioner of Revenue decided, in the exercise of his judgment, that the assessments of the other roads should not be reduced. Plaintiff contends that when it asked for a review it showed that its property was valued in excess of true value. If it had stopped at that point it might have been said that it was an exercise of discretion by the Commissioner of Revenue as to whether the proof was sufficient, but Plaintiff went a step further and showed the Commissioner and showed to the Court that the assessment then before the Commissioner of Revenue was made on a wrong principle and that if the Commissioner of Revenue adopted that assessment the result would be that he would be making the assessment on a wrong principle. Notwithstanding this he adopted the assessment. Plaintiff went a still further step and showed that as to two members of the class of railroads the Commissioner was making a new assessment, reducing the 1921 assessment by millions of dollars, whereas while the Plaintiff did not have then the final value of its reproduction cost as fixed by the Interstate Commerce Commission, yet it had and produced to the Commissioner of Revenue a reproduction cost which the law said should be followed in fixing the tangible value, and notwithstanding this the Commissioner of Revenue declined to heed that evidence but disregarded it entirely. The result was discrimination between members of the same class in that a wrong principle of taxation was followed.

The case of *Davis* v. *Wallace,* decided January

9, 1922, and found on page 48 of Plaintiff's brief, so holds.

Defendants (pp. 64 and 65 of Appellees' brief) cite decisions to sustain the doctrine that in property taxation of interstate railroads the employment of the unit rule does not burden interstate commerce. This Plaintiff has no quarrel with that proposition, but there should be added thereto, "except where abnormal values in other States are shown." We desire to most earnestly impress upon the Court that this Plaintiff complains that in the making of its 1920 assessment and in the review or reassessment of its property in 1921, the tax authorities *declined, failed and refused to follow the unit rule.* We refer the Court to our brief in chief for the facts on this and to record page 99. We have contended all along that in so far as this interstate railroad is concerned the method prescribed by the statutes of North Carolina required that for an interstate railroad the total value should be ascertained, whatever principle was applied, and the North Carolina value should be ascertained by taking a mileage proportion thereof. This is nothing more nor less than the unit rule.

On page 66 of Appellees' brief it is said:

> "As we have seen, the basis of the valuations upon which the assessments in question were made was a unit rule valuation of the tangible properties of the whole railroad, an apportionment of the result of a mileage proportion to North Carolina, and the adding of the value of intangible properties in that State arrived at by a consideration of the factors above enumerated."

It is a fact that this Plaintiff's assessment was not ~~above is correct, by their own contention this~~ Plaintiff's assessment was not made uniformly with other carriers and was not made in accordance with what they announce as a proper method. ~~It is a fact that this plaintiff's assessment was not so made.~~

Defendants say that the Plaintiffs contend that their assessments are burdens on interstate commerce because not controlled by and reduced to what are known as the tentative figures of the Interstate Commerce Commission (Appellees' brief, p. 82).

Defendants have not correctly understood this Plaintiff's contention. At the risk of repetition, we contend with respect to the tentative value of the Interstate Commerce Commission and with respect to reproduction cost submitted by the individual Plaintiffs to the tax authorities, that they should have been heeded and followed in reaching the assessment, because—

1. Under Defendants' contention the valuation was controlled solely by the Revaluation Act, and it was therein specifically provided that reproduction cost be furnished, and if furnished, it must have been furnished for the purpose of being used, and under Section 64 the reproduction cost is required to be used. Defendants assumed to disregard the mandate of the law, because, it said, the data furnished was not complete, and the tax authorities set up for themselves a method. This is contrary to the decision in the case of *Davis* v. *Wallace, supra,* which holds:

> "From what has been said it follows that to sustain the tax in question we should have to hold that the taxing officers, on finding that it could not constitutionally be assessed on the basis specially prescribed in the statute, were at liberty to assess it on another and different basis which the statute shows was not to be applied to corporations of the class to which these railroad companies belong. Of course we can not so hold."

2. Plaintiff contends that the tax authorities used reproduction cost as to two carriers, and failure to use that which was available as to Plaintiff was illegal discrimination as between members of the same class.

See the case of *Magoun* v. *Illinois Bank,* 170 U. S. 283, a quotation from which may be found at page 100 of Appellees' brief.

3. That the reproduction cost furnished by Plaintiff to the Tax Commission and the Commissioner of Revenue and the tentative value as found by the Interstate Commerce Commission, together with the other evidence, showed that if the method prescribed by the statute of North Carolina had been followed, then the result would have been many millions less than that arrived at by the wrong method, from which it follows that the assessment made and now complained of is in excess of the true value of Plaintiff's property.

Defendants, from pages 130 to 137, we think went to unnecessary trouble, because this Plaintiff does not deny the right of the State to levy a privilege tax on a proper basis for the doing of intrastate commerce.

The case of *Osborne* v. *Florida,* establishes the proposition that where there is a privilege tax levied and the wording of the Act makes it doubtful whether it is for the doing of all business or only intrastate business and the Supreme Court of the State has construed the statute and limited it to the doing of business solely within the State, then the Supreme Court of the United States will follow that construction and hold that the Act does not on that point violate the Federal Constitution. To make the case one in point, Defendants should have gone one step further and shown that the Supreme Court of North Carolina had so construed the Act. This, we submit, it has failed to do. In fact, the *Osborne Case, supra,* relied on by the Defendants may be relied upon by the Plaintiff on the question of whether or not the so-called privilege tax in this case is not in truth and in fact a property tax, because on that question we show (p. 81, main brief) that under North Carolina decisions, which would control this Court on the question of construction of a State statute, this tax falls under the head of a property tax rather than a privilege tax.

Much reliance is also placed on the case of *St. L. etc. Ry. Co.* v. *Arkansas,* 235 U. S. 350. As shown by the excerpt quoted from that case on page 143 of Appellees' brief, the Supreme Court accepted the construction of the Act of Arkansas as set forth in the opinion of the Supreme Court of Arkansas, which construction was that the franchise tax was limited to the exercise of corporate powers within the State. Appellant also relies upon that case and quotes from it on page 106 of Appellant's brief.

FRANCHISE OR PRIVILEGE TAX

Defendants, on page 127 of their brief, state Plaintiff's contention as to invalidity of the franchise tax as follows:

> "First, that it is a property tax, not a franchise or privilege tax, and hence is in violation of a supposed prohibition against double taxation in the Uniformity Clause of the State Constitution and in the Fourteenth Amendment."

This Plaintiff does not so contend. It does contend that it is not a franchise tax, but is a property tax, and it says that if it is a property tax, then, inasmuch as it is levied only on certain corporations, including railroads, it violates the Constitution of North Carolina, which requires taxation by a uniform rule of all real and personal property. The State does not contend that they could levy an ad valorem tax or property tax only on railroads, and yet if this is a property tax it would be such a tax levied only on railroads. We do not claim that this is double taxation. As we understand double taxation, it is levying two taxes on the same property.

Defendants contend that neither the State nor the Federal Constitution is violated so long as the State levies a tax impartially on all members of a class. This is, we submit, too broad a statement of the law. If it is an ad valorem tax it violates the Uniformity Clause of the North Carolina Constitution. Furthermore, if it is a property tax it is such an unreasonable and arbitrary classification as would violate the Fourteenth Amendment. This

latter is clearly held in the following language in the case of *Magoun* v. *Illinois Trust & Savings Bank,* 170 U. S. 283, 292 and 294:

> "In other words, the State may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion. It is not without limitation, of course. 'Clear and hostile discriminations against particular persons and classes, especially such as are of unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition,' said Mr. Justice Bradley, in *Bell's Gap Railroad* v. *Pennsylvania,* 134 U. S. 232, 237.
>
> "And Mr. Justice Brewer, in *Gulf, Colorado & Santa Fe Railway* v. *Ellis,* 165 U. S. 150, 165, after a careful consideration of many cases, said: 'It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.' "

Plaintiff cited the case of *Worth* v. *Railroad,* 89 N. C. 301, to show that the so-called privilege tax was not in truth a privilege tax but under the North Carolina decisions was a property tax. Defendants' answer (p. 153, Appellees' brief) is:

> "* * * *Worth* v. *Railroad,* 89 N. C. 301; *Provident Institution* v. *Massachusetts,* 6

> Wall. 611, and other cases which hold, not that a tax which is measured by property is necessarily a property tax, but that a tax which is not measured by property, but is measured by amount of business, is not a property tax, but a franchise or privilege tax."

We are not sure that we understand the above quoted reasoning. However, we think that at its face value it means that when a tax is measured by amount of business it is not a property tax but a privilege tax. Per contra, if it is measured by the value of property without relation to the amount of business it is a property tax. We contend that inasmuch as this tax is not measured by the amount of business, but is measured by the value of the entire property of the railroad assessed for ad valorem purposes in the State, it is not a privilege tax but is a property tax.

The citation of the case of *St. L., etc., Ry.* v. *Arkansas,* 235 U. S. 350, does not in any way change the rule as we view it, because in that case the Court followed the construction of the Arkansas statute by the Arkansas Supreme Court. Similarily, we ask the Court to follow the rule laid down by the North Carolina Court in construing this so-called privilege tax. We maintain that if that is done, the tax will be held to be a property tax and not a privilege tax.

The case of *Lacy* v. *Armour Packing Co.,* also referred to in Appellees' brief, is fully discussed in Appellant's brief in chief at pages 83 and 84.

On page 153 of their brief, Appellees state that "It is well settled by many cases that the fact that a tax on or for a privilege (here called franchise,

privilege, license, or excise tax) is measured by property, or its value, does not make it a property tax." In support of this statement several cases decided by this court have been cited. The first one of these is *Magoun* v. *Illinois Trust Bank*, 170 U. S. 283.

That case involved a transfer or inheritance tax law of the State of Illinois. It is settled that "the right to take property by devise or descent is a creature of the law and not a natural right—a privilege, and therefore, the authority which confers it may impose conditions upon it." The tax imposed by the State of Illinois was not one on property, but one on the succession; that is, the right to take the property. There was under the Illinois statute a classification according to the amount of the property received, and the amount of the tax imposed depended upon the classification into which the particular succession fell. The value of the privilege of succeeding is necessarily dependent upon the amount of the property to which there is succession.

The next case cited is *Clark* v. *Titusville,* 184 U. S. 329. What this court held in that case is shown in the only head note thereto, which is as follows:

> "The City Government of Titusville, in Pennsylvania, imposed a license tax upon persons carrying on certain occupations in that city. This court holds that it was a tax on the privilege to do business, regulated by the amount of the sales, and was not repugnant to the Constitution of the United States."

In other words, this was merely a sales tax, measured by the amount of the sales and had no reference to the amount of the property or value of the property used in the business.

The next case cited is that of *Keeny* v. *New York,* 222 U. S. 525. That case involved a transfer tax upon the privilege of acquiring property by an instrument taking effect on the death of the grantor, or property conveyed in contemplation of the death of the grantor. This presents the same situation as an inheritance tax. A tax is imposed upon the privilege of acquiring property in the manner set out in the statute. This court held that there was no difference in acquiring property in this manner than by legatees and devisees under a will. The privilege tax is measured by the extent to which the privilege is enjoyed, and the extent to which the privilege is enjoyed can not be determined without reference to the value of the property received.

Another case cited is the *Baltic Mining Company* v. *Mass.,* 231 U. S. 68. This case involved an excise tax imposed by the laws of the State of Massachusetts "to be assessed by the Tax Commissioner of one-fiftieth of one per cent of the par value of its authorized capital stock as stated in its annual certificate of condition: but the amount of such excise tax shall not in any one year exceed the sum of $2,000.00."

The situation presented in the Baltic Mining Company case is obviously different from that presented in this case. In the Baltic Mining Company case the privilege tax is measured by the par value of its authorized capital stock without refer-

ence to the value of the property employed in the State and the maximum amount of such privilege tax is $2,000.

Kansas City Railway v. *Kansas,* 240 U. S. 227, involved a privilege tax imposed upon domestic corporations by the laws of the State of Kansas. The amount of this annual fee is graduated according to the amount of its paid up capital stock. For example: as stated in the opinion, "when this capital stock does not exceed $10,000, the fee is $10.00; when it exceeds $10,000 and is not over $25,000, the fee is $25.00; and there are further increases, graduated as stated, until the maximum fee of $2,500.00 is reached, that sum being payable in all cases where the paid up capital stock exceeds $5,000,000."

A consideration of these cases serves rather to emphasize the difference between them and the methods employed, and this case and the methods employed. The so-called privilege or franchise tax is calculated upon the value of all of plaintiff's property in North Carolina for ad valorem taxes. In this ad valorem value there is included the value of the privilege of doing business in the State of North Carolina. In other words, Plaintiff has its so-called privilege tax measured not only by the value of the property employed in that State, but also by the value of the privilege for the use of which this so-called privilege tax is imposed. A somewhat similar situation would be presented if under the inheritance tax laws the privilege tax was measured by the value of the property received, plus the value of the privilege of being permitted to receive it.

We do not think any case can be found in this Court where, in the absence of previous construction of the State law by the State court that such a tax is a privilege tax, the rule is announced that a tax is a privilege tax which is not in any way based upon the amount of business done or the value of the privilege exercised, but upon the ad valorem assessment of the taxpayer.

The Tax Commission and these Defendants state that they used the investment account as the basis for ascertaining the ad valorem value. This is set forth in Appellees' brief on page 61 as follows:

> "Therefore the mileage proportion of the investment account was taken as the basic figure for tangible property value in the State, and the gross earnings proportion of the investment account was taken as the basic figure for intangible values in the State plus the value of the tangible property, or for total of tangible and intangible property in the State."

Suppose there were two lawyers doing business in North Carolina. Lawyer "A" had a law library valued and assessed for ad valorem tax purposes at $10,000.00 and did a business of $1,000.00 a year; and lawyer "B" had a law library valued and assessed for ad valorem tax purposes at $1,000.00 and did a $10,000.00 practice per year. Can it be said that the privilege tax for practicing law would be legal as applied to those two men which would be based not upon the amount of business done but on the ad valorem assessment, thereby taxing lawyer "A" ten times the amount lawyer "B" is taxed for doing one-tenth of the business done by lawyer "B"?

Can it be said that a tax levied under such facts on the ad valorem value is a privilege tax regardless of what it is called? Is it anything but a tax on property? If it is a property tax, it violates the Uniformity Section of the North Carolina Constitution. If it is a property tax, it can not be upheld, because it is in the teeth of Section 3 of the Revenue Act of 1921, which provides that for the year 1921 "no tax on any property in the State shall be levied for any of the uses of the State Government, etc."

Respectfully submitted,

S. R. Prince,
Counsel for Plaintiff.

L. E. Jeffries,
W. M. Hendren,
C. O. Amonette,
Of Counsel.

SOUTHERN RAILWAY COMPANY *v.* WATTS AND WATTS, AS COMMISSIONER OF REVENUE, ET AL.

ATLANTIC & YADKIN RAILWAY COMPANY *v.* WATTS AND WATTS, AS COMMISSIONER OF REVENUE, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

SEABOARD AIR LINE RAILWAY COMPANY *v.* WATTS AND WATTS, AS COMMISSIONER OF REVENUE, ET AL.

ATLANTIC COAST LINE RAILROAD COMPANY *v.* WATTS AND WATTS, AS COMMISSIONER OF REVENUE, ET AL.

NORFOLK SOUTHERN RAILROAD COMPANY *v.* WATTS AND WATTS, AS COMMISSIONER OF REVENUE, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

Nos. 368, 369, 381, 382, 383. Argued November 22, 23, 1922.—Decided January 2, 1923.

1. The Equality Clause does not require that the methods of assessing and equalizing state taxes on railroads shall be the same as those applied to other classes of property. P. 525.
2. Undervaluation of property for taxation, as compared with valuation of other property of the same class, does not violate the Equality Clause if it is not intentional and systematic. P. 526.
3. The *ad valorem* taxes imposed on complainant railroads, through an application of the unit rule of assessment, under the Revaluation Act of North Carolina, Public Laws 1919, c. 84, do not violate the Due Process or the Commerce Clauses of the Federal Con-

stitution or the true value and uniformity provisions of the constitution of North Carolina, Arts. V and VII. P. 527.

4. Mere errors of judgment upon the part of the assessing authorities are not subject to review in these suits to enjoin the collection of the taxes. P. 527.

5. The North Carolina Revaluation Act, *supra*, though referring to data commonly used in valuing railroads and authorizing the state taxing board to require railroads to furnish such information, did not make mandatory any particular method of valuing railroads, but required the board to exercise an informed and honest judgment in that regard. P. 527.

6. Failure to follow methods referred to in earlier statutes could not render illegal the revaluation of railroads made under that act by the state board in 1920, since such valuation was tentative and became an assessment by the legislature through approval by North Carolina Laws 1920, Ex. Sess., c. 1. P. 528.

7. The state board, though empowered to reduce this statutory assessment, was not required to make a new valuation, or to apply any particular method of valuation. P. 528.

8. The so-called franchise tax imposed for state purposes on railroad companies by North Carolina [Laws 1920, Ex. Sess., c. 1, § 82 (6½); Laws 1921, c. 34,] equal to one-tenth of one per cent. of the value of each company's property within the State, is not an additional property tax, and does not violate the Uniformity Clause of the state constitution or the Equality or Commerce Clauses of the Federal Constitution. P. 529.

9. The aggregate burden imposed by the property tax, the franchise tax, and the income tax does not obstruct interstate commerce. P. 530.

10. Section 82 (3½) of c. 34, North Carolina Laws 1921, has no application to railroads. P. 530.

289 Fed. 301, affirmed.

APPEALS from decrees of District Courts, under Jud. Code, § 266, denying interlocutory injunctions in suits by divers railroad companies to enjoin collection of taxes in North Carolina.

Mr. S. R. Prince, with whom *Mr. L. E. Jeffries*, *Mr. W. M. Hendren* and *Mr. C. O. Amonette* were on the briefs, for appellants in Nos. 368 and 369

Mr. Murray Allen, with whom *Mr. Forney Johnston* and *Mr. James F. Wright* were on the brief, for appellant in No. 381.

Mr. Thomas W. Davis, with whom *Mr. George B. Elliott*, *Mr. Harry Skinner* and *Mr. H. W. Whedbee* were on the brief, for appellant in No. 382.

Mr. W. B. Rodman, with whom *Mr. C. M. Bain*, *Mr. John M. Robinson* and *Mr. W. B. Rodman, Jr.*, were on the brief, for appellant in No. 383.

Mr. James S. Manning, Attorney General of the State of North Carolina, *Mr. William P. Bynum*, and *Mr. Sidney S. Alderman*, with whom *Mr. Frank Nash*, *Mr. George H. Brown*, *Mr. Locke Craig* and *Mr. Thomas D. Warren* were on the briefs, for appellees.

Mr. Justice Brandeis delivered the opinion of the Court.

These five cases were heard together and present largely the same questions of law. Each is an appeal from a decree entered by a federal District Court for North Carolina under § 266 of the Judicial Code denying an interlocutory injunction. In each a railroad company engaged in interstate commerce seeks to enjoin the taxing officials from collecting the *ad valorem* property taxes for the year 1921, imposed for local purposes, and the franchise tax imposed for state purposes. Some of the corporations plaintiff are foreign; some, domestic. One has its lines wholly within the State; four have lines also in other States. But these differences are without legal significance in this connection. The property taxes are assailed on the ground that, as assessed, they violate the equal protection clause, the due process clause, and the commerce clause of the Federal Constitution, the uniformity provision of the state constitution, and the statutory method of valuation. The franchise taxes are assailed on

the ground that the statute under which they are laid violates the commerce clause, the equal protection clause, and the due process clause of the Federal Constitution, as well as the uniformity clause of the state constitution; that the amounts of these taxes were illegally calculated, in violation of the statutes of the State; and that since they are fixed by a percentage of the *ad valorem* valuations, they must fall because those valuations were illegally made. Many of the objections made raise questions as to the meaning and effect of recent statutes of the State which have not yet been construed by its courts; and we are reluctant to pass upon these questions. Some of the objections raise issues of fact on which the evidence is submitted by affidavit and is in certain respects conflicting. But in all the cases jurisdiction rests upon substantial federal questions. The objections to the validity of the legislation and of the assessments, whether arising out of the Federal Constitution or out of the constitution or statutes of the State, may be presented in a single suit. We must, therefore, determine state, as well as federal, questions. *Michigan Central R. R. Co.* v. *Powers*, 201 U. S. 245, 291; *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 508; *Davis* v. *Wallace*, 257 U. S. 478. All the objections urged have been considered. We are of opinion that none of them should be sustained. The more important ones will be discussed.

The controversy arose in this way.[1] By the constitution of North Carolina taxation of real and personal property must be uniform and *ad valorem* "according to

[1] See Constitution of North Carolina, Articles V and VII; Laws of North Carolina, 1919, c. 90, Revenue Act, particularly §§ 3, 76, 77, 78 and 82; c. 84, Revaluation Act, particularly §§ 1, 3, 4, 7, 25, 26 and 31; Laws of North Carolina, 1920, c. 1, Adopting Revaluation, particularly §§ 1, 2, 3, 4, 5, 7a, 7b, 7d and 82(6½); Laws of North Carolina, 1921, c. 34, Revenue Act, particularly §§ 1, 2, 3, 26, 76, 77, 79, 79a, 80, 81, 82, 82(1), 82(2), 82(3), 82(3½), 82(4), 82(6), 82(6½),

its true value in money." In the assessments made prior to 1920 nearly all classes of property had been grossly undervalued; but the undervaluation varied greatly in degree. The Revaluation Act of 1919, Public Laws, 1919, c. 84, was passed in order to provide for new and fundamentally changed valuations of all property at full values. The valuation of real estate was to be made by county officials; that of railroad property by a state board under an application of the unit rule; and the assessment so made was to be allocated by the state board to the counties on a mileage basis.[2] By that act the valuations made by these taxing boards were to become effective as assessments only upon approval by the legislature. When so approved, they were to be the basis of the taxation for the years 1920 to 1923 inclusive. Revaluations of real estate and of railroads were made under that act and were approved by the legislature in August, 1920. Public Laws, 1920, c. 1. Through these revaluations the assessments of railroad property were, on the average, doubled, as compared with the assessments prevailing in 1919;[3] and

---

82(7), 82(8), 82(9), 82(10), 82(11), 82(12), 82(13), 82(15), 82(16), 82(17) and 82(18); c. 38, Machinery Act, particularly §§ 28*a*, 28*b*, 28*c*, 28*d*, 28*e*, 28*f*, 28*g*, 61, 62, 62*a*, 63, 64 and 65; c. 40, Transferring Powers of State Tax Commission to State Department of Revenue, §§ 1, 2 and 3. Act of Special Session December, 1921, to amend c. 34 of Public Laws, 1921, §§ 1, 2 and 3; to amend c. 38 of Public Laws, 1921; Act of December 19, 1921, to refund tax illegally assessed.

[2] Prior to 1921 railroad property was valued and assessed (apart from the action by the legislature in 1920) by the State Tax Commission. In 1921 the powers of the State Tax Commission were transferred to the Department of Revenue under a Commissioner of Revenue. In this opinion "state board" is used throughout to refer to state authorities as distinguished from county boards which assessed local real estate.

[3] The increases were: Southern Railway $46,869,942 to $96,605,694; Atlantic & Yadkin Railway, $1,975,806 to $4,104,710; Seaboard Railway, $20,191,720 to $34,768,440; Atlantic Coast Line Railway, $34,645,345 to $50,867,800.

those of real estate were quadrupled. The aggregate assessment of all the railroad properties as revalued in 1920 was $250,587,158; the aggregate of the real estate $2,006,124,997; that of the personal property $807,866,443; and that of industrial and financial institutions $444,748,145.

The relatively larger increase in the revaluations of real estate and of other property resulted in railroad taxes for 1920 lower than had prevailed theretofore; and these taxes were duly paid. But widespread objection to continuing the 1920 revaluations as a basis for the taxation of real estate developed in the latter part of 1920. A severe depression in business had occurred; there was an abrupt decline in commodity prices, particularly farm products; and real estate values were affected by this decline. The legislature, thereupon, made provision, Public Laws, 1921, c. 38, § 28, under which, upon application of taxpayers, the 1920 revaluations of real estate could be reviewed by county boards and those of railroad property by the state board. These boards were authorized to make corrections wherever assessments were found to exceed existing values. By proceedings under the Act of 1921 reductions were made in 67 counties, varying from 1 to 50 per cent. in the valuations of real estate (including that belonging to the railroads not used in the transportation service). In 33 counties no reduction in the valuations of real estate was allowed. The legislature of 1921 had made no provision for reviewing the revaluations of personal property; and the assessments thereon remained unchanged, although the valuations of personalty had also been greatly increased in 1920. Under the Transportation Act, 1920, the Interstate Commerce Commission issued, in the latter part of 1920, orders pursuant to *Ex parte 74, Increased Rates,* 58 I. C. C. 220, raising freight rates in North Carolina 25 per cent. and passenger rates 20 per cent. over those prevailing when the revaluation of 1920

was made. Thereafter, the five railroads applied to the state board for reduction of their valuations as the basis for taxation in 1921 and subsequent years. The application of the Norfolk & Southern was granted in part; and its assessment was reduced from $27,023,462 to $22,840,932. But, after due hearing, and rehearings, the state board refused to modify the assessments of the other four railroads which had been fixed by the legislature of 1920. Thereupon these suits were begun.

The contention of the railroads that the property taxes as assessed are obnoxious to the Federal Constitution was rested here mainly on the claim that there is a denial of equal protection of the laws. This claim is asserted on several grounds. It is contended, in the first place, that the Act of 1921 providing for the review of valuations is void. The argument is that the railroads were discriminated against, because real estate owners are given an appeal on assessments from the county board to the State Board of Equalization, but that no such appeal is provided from the assessment of railroads. It is also argued that there is discrimination in this: While c. 38, § 28*g*, provides for reduction by the state board in the valuation of a railroad only where it applies therefor, reductions in the value of all real estate within the county were, under § 28*a*, to be made provisionally, if the county board determined that the 1920 valuation was, as a whole, in excess of a fair value; and that in such event the percentage of the average excess would be applied to each parcel in the county, unless and until the assessment of individual real estate owners should be revised by the State Tax Commission. The differences in the classes of property, and in the conditions of ownership, obviously made difference in treatment unavoidable. Differences in the machinery for assessment or equalization do not constitute a denial of equal protection of the laws. *New York State* v. *Barker*, 179 U. S. 279.

The claim that plaintiffs have been denied equal protection of the laws appears to rest more largely on the charge that discrimination has been practiced against them in administering the tax laws. It is urged that county boards, proceeding under § 28*a* of the Act of 1921, reduced real estate valuations quite generally, but that the state board, acting under § 28*g*, refused to reduce the valuation of any railroad except that of the Norfolk & Southern. The rule is well settled that a taxpayer, although assessed on not more than full value, may be unlawfully discriminated against by undervaluation of property of the same class belonging to others. *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20. This may be true although the discrimination is practiced through the action of different officials. *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499. But, unless it is shown that the undervaluation was intentional and systematic, unequal assessment will not be held to violate the equality clause. *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 353; *Chicago, Burlington & Quincy Ry. Co.* v. *Babcock*, 204 U. S. 585; *Coulter* v. *Louisville & Nashville R. R. Co.*, 196 U. S. 599; *Sioux City Bridge Co.* v. *Dakota County*, *ante*, 441. Plaintiffs have clearly failed to establish that there was intentional and systematic undervaluation by the county boards. Strong evidence to the contrary is furnished by the fact that in 33 counties, including those in which the largest cities are located, no reduction was made in the valuation of real estate and that in the remaining 67 counties the reduction varied from 1 to 50 per cent. Plaintiffs have failed, likewise, in showing systematic refusal on the part of the state board to allow a proper reduction in the valuation of any railroad. The further contention that by reduction of the Norfolk & Southern's assessment the other plaintiffs were discriminated against is also unfounded.

The claims that the assessments made by the legislature in 1920 violate the due process and commerce clauses of the Federal Constitution and the true value and uniformity clauses of the state constitution, rest largely upon the contentions that the valuations were made on wrong principles and are excessive. There was ample opportunity to be heard; and the opportunity was availed of. There is no suggestion of bad faith. At the most there have been errors of judgment; and mere errors of judgment are not subject to review in these proceedings. *Pittsburg, Cincinnati, Chicago & St. Louis Ry. Co.* v. *Backus*, 154 U. S. 421; *Brooklyn City R. R. Co.* v. *New York*, 199 U. S. 48, 52. There was no taxation of interstate commerce. *Postal Telegraph Cable Co.* v. *Adams*, 155 U. S. 688; *Western Union Telegraph Co.* v. *Taggart*, 163 U. S. 1. There is not shown any taxation of property without the State as in *Wallace* v. *Hines*, 253 U. S. 66. Because these several constitutional objections are, in our opinion, unfounded, we do not deem it necessary to consider the contention of defendants that there was open to plaintiffs the opportunity of reviewing the assessments in the state courts by writ of certiorari, and that, unless and until such remedy had been exhausted, there was no right to seek relief by these bills in equity. See *Keokuk & Hamilton Bridge Co.* v. *Salm*, 258 U. S. 122, 125.

The claim that the railroads' property taxes are void under the statutes of the State seems to rest, in the main, on the charge that in valuing them in 1920, and in passing upon the application for reduction under the Act of 1921, the state board failed to follow the method of valuation prescribed. It is argued, among other things, that there was no separate assessment of tangible and intangible property; or if so, that plaintiffs were not notified as to what that separation was; that there was no due consideration of the actual cost of replacement of the property, with just allowance for depreciation of rolling stock; that

the franchise or intangible value was not assessed by a due consideration of the gross earnings as compared with operating expenses, or of the market value of the stocks and bonds; that the particular method prescribed by the statutes for assessing interstate roads was not followed; and that erroneous methods of valuation were adopted. To these contentions there appear to be several answers. The Revaluation Act did not make mandatory any particular method of valuation. The legislature recognized that the difficulties inherent in valuing a railroad are great. It desired that the valuers should have access to every fact which might aid them in performing their duty. The data concerning the railroads referred to in the act, like the methods of valuation referred to in earlier and later legislation, are among those commonly used when an attempt is made to ascertain the value of a railroad. But they are merely aids. Such data are commonly in the possession of the railroad companies; and are often not readily accessible to others. The legislature by the Revaluation Act authorized the state board to require the railroads to furnish the information. But it did not undertake to prescribe to what extent or how the information should be used by them. Their duty was merely to exercise an informed and honest judgment in fixing values for purposes of taxation. Compare *Minnesota Rate Cases*, 230 U. S. 352, 434. Another answer to plaintiffs' contention is that mere failure to follow methods of valuation referred to in earlier statutes could not, in any event, render illegal the revaluation made by the state board in 1920; since it was, by the Revaluation Act, made tentative merely. That tentative valuation became an assessment by the legislature, and, hence the law, through approval by c. 1, Laws Extra Session, 1920, which made it the assessment for the next four years. The state board, when applied to in 1921, had power to reduce the statutory assessment; but in acting on the applications it was not,

as we read the statutes, required to make a new valuation, or to apply any particular method of valuation.[4]

The railroad franchise tax, equal to one-tenth of one per cent. of the value of the company's property within the State, is imposed wholly for the support of the state government. Such taxes are expressly authorized by the state constitution, Article V. Before 1920 the contribution of railroads toward the expenses of the state government was made partly by a small privilege tax dependent on gross earnings per mile, partly from a percentage of the *ad valorem* property tax paid by them; and in valuing railroad property there was included among the intangibles what is frequently called the franchise or the corporate excess. In 1920 this mileage privilege tax was abolished; payment for general state purposes of a percentage of the property tax was discontinued; and by § 82 (6½) of c. 1, Laws Extra Session, 1920, and Revenue Act

[4] The following statutory provisions show that no assessment was made by the State Tax Commission in 1920 or 1921 or by the Commissioner of Revenue in 1921, but that the assessment was made by the legislature in 1920. The only power of the Commissioner of Revenue in 1921 was to make reductions in certain cases.

Revaluation Act, Public Laws, 1919, c. 84, § 6, provided that all real property should be valued as of May 1, 1919, and such value should be used for all tax purposes for 1920, 1921, 1922, and 1923. Section 31 provided for a complete revaluation of all railroad companies to be used as the basis for computing taxes for such companies for 1920, 1921, 1922 and 1923. Section 3 provided that the assessment made under said act was not to be used as a basis for computation of taxes until it had been approved by the legislature.

Act of Special Session, 1920, c. 1, § 1, approved the "assessment or valuation" made under Revaluation Act of 1919 and adopted it as the basis for levy of tax rates by the State and all subdivisions thereof for 1920, and the valuation of real property so fixed was adopted for 1921, 1922 and 1923, "except as such valuations may be hereafter changed according to law."

Machinery Act, Public Laws, 1921, c. 38, § 64, provided for the valuation of railroads (laying down rules therefor) "at such dates as real estate is required to be assessed for taxation."

of 1921, c. 34, the so-called franchise tax here in question was imposed. It is argued that this franchise tax is an additional property tax which is not imposed on others, and that, consequently, it violates the uniformity clause of the state constitution and the equal protection clause of the Federal Constitution. It is true that the franchise tax is measured by the value of property already subjected to the *ad valorem* tax. But a privilege tax is not converted into a property tax because it is measured by the value of property (compare *Clark* v. *Titusville*, 184 U. S. 329, 333, 334); nor by the fact that in this measure is included property not used in the transportation service. Railroads differ in so many respects from other properties that they may, as a class, be taxed differently or additionally, if that is not inconsistent with the constitution of the State.

Nor is there any basis for the claim that the franchise tax act violates the commerce clause. The tax appears to be upon the privilege of doing an intrastate business. Compare *Armour Packing Co.* v. *Lacy*, 200 U. S. 226. It is not of the character which is held a burden upon interstate commerce. *St. Louis Southwestern Ry. Co.* v. *Arkansas*, 235 U. S. 350; *Underwood Typewriter Co.* v. *Chamberlain*, 254 U. S. 113, 119, 120; *St. Louis-San Francisco Ry. Co.* v. *Middlekamp*, 256 U. S. 226. Payment of the tax is not made a condition precedent to granting a railroad permission to do interstate business. Compare *Leloup* v. *Mobile*, 127 U. S. 640. *Underwood Typewriter Co.* v. *Chamberlain*, 254 U. S. 113, 119. And there is no basis for the contention that the aggregate burden imposed by the property tax, the franchise tax, and the income tax, operates to obstruct interstate commerce.

The remaining objections to the franchise taxes relate merely to the amounts at which they are calculated. It is insisted that § 82 (3½) of the Revenue Act of 1921 applies, and that therefore upon the facts stated the tax should be for one-twentieth, not for one-tenth, of one per cent. of the value of the company's property within

the State. The Norfolk & Southern, insisting likewise that the section applies, argues that the taxes assessed upon others thereunder would be only one-half the percentage it is required to pay, and, therefore, contends that the act denies to it equal protection of the laws. Upon this question of statutory construction the courts of the State have not yet passed. The taxing officials insist that § 82 (3½) has no application to railroads; and in support of their contention point to the history of the legislation. We think that they are right.

A further objection peculiar to the Atlantic & Yadkin Railway should be mentioned. This road is located wholly within North Carolina. Its entire capital stock is owned by the Southern; and it is operated as a part of the Southern System. The state board assessed all the lines operated by the Southern System at $101,960,413, and then apportioned to the Atlantic & Yadkin the sum of $4,104,710, a sum alleged to be grossly excessive. Defendants aver that the amount represents the actual value of the property. They say, further, that the apportionment was made in accordance with the plan suggested by the tax commissioner of the Southern System; that neither the Southern Railway nor the Atlantic & Yadkin was, in any way, prejudiced by assessing the property together; or by allocating this amount to the latter; that if the Atlantic & Yadkin was overassessed, the Southern was, to that extent, underassessed; and that the company is estopped by its conduct from questioning the assessment on this ground. A doubt is raised whether the taxes assessed upon this plaintiff should be sustained. But even if the objection can be availed of in this suit, the state of the record is not such as to justify us in reversing, on this ground, the decree denying an interlocutory injunction to the Atlantic & Yadkin. It will, of course, be open to this plaintiff to renew the objection upon the final hearing.

Affirmed.